STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	)	
	)	
vs	)	**Docket No. 05-0713**
	)	
King City Telephone, LLC d/b/a Southern Illinois	)	
Communications and Royal Phone Company LLC	)	
	)	
Complaint Pursuant to Section 10-108 of the Illinois	)	
Public Utilities Act and 83 Ill. Admin. Code 200.170	)	

INITIAL BRIEF OF AT&T ILLINOIS

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Dated: February 17, 2006

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INITIAL BRIEF OF AT&T ILLINOIS

Illinois Bell Telephone Company ("AT&T Illinois" or "the Company") hereby submits its Initial Brief in this proceeding.

I. INTRODUCTION

In its complaint in this case, AT&T Illinois requested that the Commission require Royal Phone Company LLC ("Royal") to comply with its interconnection agreement with AT&T Illinois, by entering into an amendment to that Agreement to incorporate the revised rates for unbundled network elements ("UNEs") and UNE combinations established by the Commission's June 9, 2004 Order in Docket 02-0864, with such rates to become effective as of June 25, 2004, the effective date specified in the Order. [1] On February 8, 2006, AT&T Illinois and Royal filed a "Stipulation and Agreement" (the "Stipulation"), agreeing to the relevant facts and identifying

[1] AT&T Illinois also named King City Telephone, LLC d/b/a Southern Illinois Communications ("King City") as a respondent to the Complaint. Following the prehearing conferences in this proceeding, King City represented that it would sign AT&T Illinois' proposed amendment for incorporating the rates approved in Docket 02-0864, thereby enabling AT&T Illinois to dismiss King City from the complaint. Based on this representation, AT&T Illinois is only addressing in this brief the issues as they relate to Royal. As of the date of the filing of this brief, however, AT&T Illinois has not yet received an original signed copy of the amendment from King City. Accordingly, AT&T Illinois reserves the right to file such additional briefs and/or pleadings as may be necessary in the event that King City does not deliver to AT&T Illinois an original copy of the signed amendment in the near future.

the issues in dispute. Jt. Ex. 1. As indicated in the Stipulation, Royal does not dispute the need to amend the Agreement to incorporate the UNE rates as updated by the Commission's 02-0864 Order. Jt. Ex. 1, ¶ 2. Royal, however, objects to two aspects of the amendment proposed by AT&T Illinois for incorporating the 02-0864 rates (the "Pricing Amendment"), which is attached to the Stipulation as Joint Exhibit 4.

First, Royal asserts that AT&T Illinois failed to implement the Commission's 02-0864 Order with respect to the Disaggregated POTS Line Connection Charges shown on lines 74, 75, 77 and 78 of Attachment A to the Pricing Amendment, which reflect nonrecurring design costs associated with the provisioning of POTS loops. AT&T Illinois takes the position that the Disaggregated POTS Line Connection Charges fully comply with the Order. To resolve this issue, the parties have agreed to accept the Commission's resolution of the identical issue in the final Order in *Illinois Bell Telephone Company v. Forte Communications, Inc.*, Docket 05-0171. Jt. Ex. 1, ¶ 4. Accordingly, there will be no need to present evidence on that issue or to brief it in this proceeding. With the exception of the Disaggregated POTS Line Connection Charges, Royal does not take issue with any of the rates included in Attachment A to the Pricing Appendix. *Id*.

Second, Royal takes issue with the provision of the Pricing Amendment that makes the rates approved in Docket 02-0864 effective on June 25, 2004, asserting that that "SBC failed to provide notice or put forth a proposed amendment to Royal as, Royal asserts, is required by the ICA, until March 24, 2005, and therefore cannot backdate the effective date of the amendment. " Jt. Ex. 1, ¶ 3. Royal's position is without merit. Pursuant to the applicable provisions of the AT&T Illinois/Royal agreement, Royal has already agreed to incorporate rates established by orders in generic ratemaking proceedings such as Docket 02-0864 "effective as of the date

specified in such order or docket, giving effect to any retroactive application if so ordered." Jt. Ex. 2, § 2.11.3; Jt. Ex. 3, § 1.6. The effective date for new rates specified by the Order in Docket 02-0864 was July 25, 2004. In construing identical provisions of the AT&T Illinois/Forte interconnection agreement in Docket 05-0171, the Administrative Law Judge concluded that "[i]t is clear from the specific terms of the contract, that the parties agreed to amend their contract to incorporate new rates with an effective date the same as that contained in the Commission's Order, i.e., June 25, 2004." *Administrative Law Judge's Proposed Order*, Docket 05-0171 at 7 (Nov. 17, 2005). Royal's suggestion that its contractual obligation to make the new rates effective on June 25, 2004 was contingent upon receiving a proposed amendment from AT&T Illinois earlier than March 24, 2005 is unsupported by any language in the Agreement.

II. BACKGROUND AND STATEMENT OF FACTS

On June 9, 2004, the Commission issued its Order in *Illinois Bell Telephone Company, Filing to Increase Unbundled Loop and Non-Recurring Rates*, Docket 02-0864 (the "Order"). As discussed in the Order, Docket 02-0864 was "substantively a proceeding to establish UNE prices under Section 252 of the [Telecommunications Act of 1996] ("TA96") and the FCC's TELRIC pricing rules, and thus is also a generic ratemaking proceeding under Section 252." *Order* at 9. In the Order, the Commission approved changes in recurring rates for unbundled access to AT&T Illinois' UNE loops, as well as certain non-recurring charges for UNE loops, UNE-P, new EELs and conversion of special access (and private lines) to EELs. Jt. Ex. 1.0, ¶ 1(d).

The Order directed AT&T Illinois to file amended tariff sheets containing revised rates conforming to the conclusions of the Order, with such rates to become effective seven days after

filing. *Order* at 229. Pursuant to the Order, AT&T Illinois filed amended tariffs on June 18, 2004. Jt. Ex. 1, ¶ 1(d). Those rates and supporting cost studies were reviewed by the Commission Staff for compliance with the Order and the rates became effective on June 25, 2004 in accordance with the requirements of the Order. The Order provides that such rates "will be incorporated into current interconnection agreements depending on the change of law provisions contained therein." *Order* at 293.

The Order also directed AT&T Illinois to disaggregate certain non-recurring charges ("NRCs") to establish separate connection and disconnection charges where applicable and to also disaggregate such charges for the initial connection for a particular order and additional connections covered by the same Order. The Order allowed AT&T Illinois to defer implementing the disaggregated version of the approved non-recurring charges until the end of the first quarter of 2005. On March 31, 2005, AT&T Illinois filed amended tariff sheets containing disaggregated non-recurring charges. Those rates and supporting cost studies were reviewed for compliance with the Order by the Commission's Staff. The amended tariffs became effective May 16, 2005. Jt. Ex. 1.0, ¶ 1(e).

Royal has previously agreed to amend its Agreement with AT&T Illinois to incorporate new UNE prices established by the Commission in generic proceedings such as Docket 02-0864. Specifically, Section 2.11.3 of the General Terms and Conditions ("GTCs") Appendix of the Agreement states as follows:

> **Successor Rates.** Certain of the rates, prices and charges set forth in the applicable Pricing Schedule have been established by the appropriate Commissions in cost proceedings or dockets initiated under or pursuant to the Act. If during the Term that Commission or the FCC changes a rate, price or charge in an order or docket that applies to any of the Interconnection, Resale Services, Network Elements, functions, facilities, products and services available hereunder, the Parties agree to amend this Agreement to incorporate such new rates, prices and charges, with such rates, prices and charges *to be*

> *effective as of the date specified in such order or docket* (including giving effect to any retroactive application, if so ordered). (Emphasis added).

Jt. Ex. 2, § 2.11.3. In addition, the "Appendix Pricing" of the Agreement contains a Section 1.6 which, in language very similar to that of Section 2.11.3 , states as follows:

> Certain of the rates, prices and charges set forth in this Appendix Pricing were established by the Commission. If during the Term the Commission or the FCC changes a rate, price or charge in an order or docket that generally applies to the products and services available hereunder, the Parties agree to amend this Appendix PRICING to incorporate such new rates, prices and charges with such rates, prices and charges to be effective as of the date specified in such order or docket.

Jt. Ex. 3, § 1.6.[2]

The Order in Docket 02-0864 was entered during the term of the Agreement. Jt. Ex. 1, ¶ 1(c). Moreover, the rates for which the Commission ordered changes in Docket 02-0864 apply to network elements and combinations of network elements available under the terms of the ICAs. GTC Section 2.11.3 and Appendix Pricing Section 1.6, therefore, represent an agreement by Royal to amend the Agreement to incorporate the new UNE rates established pursuant to the Order, with such rates to be effective as of June 25, 2004, the effective date specified by the Order.

In July 2004, AT&T Illinois sent a letter (the "Notice") formally notifying CLECs operating under interconnection agreements with AT&T Illinois of the Order in Docket 02-0864, and invoking the successor rate and/or intervening law provisions (as applicable) of each agreement to incorporate the approved prices for UNE and UNE combinations, such prices to become effective on June 25, 2004, the effective date specified in the Order. Jt. Ex. 1, ¶ 1(f). Included with each of the letters was a draft amendment for incorporating the prices (the "Pricing

[2] In addition, the GTC Appendix contains an "Intervening Law" provision (Section 21), which provides that "[i]n the event any of the rates . . . herein . . . are invalidated, *modified*, or stayed by any action of any state [regulatory commission] . . . , the affected provisions shall be immediately invalidated, *modified* or stayed, consistent with the action of the . . . regulatory body upon the written request of either Party" (emphasis added).

Amendment") in the form of the example shown in Joint Exhibit 4. In March of 2005, however, AT&T Illinois discovered that it had not sent a copy of the July 2004 Notice to Royal. AT&T Illinois, therefore, sent Royal the Notice and proposed Pricing Amendment on March 24, 2005.

The Pricing Amendment incorporates the prices shown in Attachment A of the Pricing Amendment and specifies that, with the exception of the disaggregated versions of certain non-recurring charges ("NRCs"), those rates "shall begin to apply on June 25, 2004." Jt. Ex. 1, ¶ 1(g). In accordance with the Order, the Pricing Amendment provides that the disaggregated NRCs replace the corresponding aggregated NRCs effective March 31, 2005. *Id*. With the exception of the disaggregated NRCs, all of the rates listed in Attachment A to the Pricing Appendix are identical to the corresponding rates included in the compliance tariff sheets that were filed on June 18, 2004, reviewed for compliance with the Commission Staff, and became effective on June 25, 2004. Jt. Ex. 1, at 11. The disaggregated NRCs included in Attachment A are identical to the corresponding NRCs included in the compliance tariff filed by AT&T Illinois on March 31, 2005, which became effective on May 16, 2005. *Id*.

Upon receiving the proposed Pricing Amendment from AT&T Illinois on March 24, 2005, Royal Phone sent a reply letter to AT&T Illinois on April 7, 2005 stating that Royal Phone is "eager" to sign the amendment but objecting to "language in the amendment obligating Royal to pay retroactively for price increases" and proposed specific language changes in the amendment. Thereafter, the Parties engaged in attempts to resolve the dispute over the effective date of the new rates but were unable to do so. Jt. Ex. 1, ¶ 1(h). On September 12, 2005, therefore, AT&T Illinois delivered a letter to Royal Phone invoking the informal dispute resolution process as described in GTC Section 10 of the Royal Agreement. Jt. Ex. 1, ¶ 1(i).

During the informal dispute resolution process, AT&T Illinois offered Royal payment arrangement alternatives providing for up to 12 months in which to pay past due amounts owed by Royal assuming that the new rates become effective as of June 25, 2004. Royal Phone stated that it was willing to sign the amendment if it were revised to make the new rates effective on a prospective basis. AT&T Illinois remained unwilling to remove language making the rates effective as of June 25, 2004 from the amendment. The Parties were unable to reach agreement. Jt. Ex. 1, ¶ 1(j). AT&T Illinois, therefore, filed the complaint initiating this proceeding.

III. ARGUMENT

As previously stated, Royal does not dispute the need to amend its Agreement with AT&T Illinois to incorporate the UNE rates, as updated by the Commission's Order in Docket 02-0864. Jt. Ex. 1, ¶ 4. Royal, however, objects to Section 2.1.2 of SBC Illinois' proposed Pricing Amendment, which provides that, "except to the extent otherwise specified in Attachment A, the new rates and rate structures shall begin to apply on June 25, 2004." Royal takes the position that, because Royal did not receive the Notice and proposed Pricing Amendment from AT&T Illinois until March 24, 2005, the effective date of the new rates included in the Pricing Amendment cannot be "backdated." Jt. Ex. 1, ¶ 3.

Royal's position is directly contrary to the terms of the ICA. As previously discussed, pursuant to GTC Appendix 2.11.3 and "Appendix Pricing" Section 1.6, Royal has already agreed to incorporate rates established by orders in generic ratemaking proceedings such as Docket 02-0864 "effective as of the date specified in such order or docket, giving effect to any retroactive application if so ordered." The effective date specified in the Order was seven days after the filing of tariffs containing rates conforming to the conclusions of the Order. *Order* at 293. Tariffs containing rates conforming to conclusions of the Order were filed by SBC Illinois on

June 18, 2004 and, following a review for compliance with the Order by the Commission Staff, became effective seven days later on June 25, 2004, in accordance with the Order's directive. Accordingly, June 25, 2004 is the effective date specified by the Order. In accordance with GTC Section 2.11.3 and Appendix Pricing Section 1.6, therefore, the rates established in Docket 02-0864 should be incorporated into Royal's ICA effective June 25, 2004.

It should be noted that the language of GTC Section 2.11.3 and Appendix Pricing Section 1.6 of the Royal Agreement is *identical* to the language of GTC Section 2.11.3 and Appendix Pricing Section 1.6 of the interconnection agreement between AT&T Illinois and Forte Communications, Inc. ("Forte") at issue in *Illinois Bell Telephone Company v. Forte Communications, Inc.*, Docket 05-0171 (*compare* Jt. Ex. 2, Section 2.11.3 and Jt. Ex. 3, Section 1.6 to GTC Section 2.11.3 and Appendix Pricing Section 1.6 quoted at pages 6 and 7 of the *Administrative Law Judge's Proposed Order*, issued November 17, 2005 in Docket 05-0171). In construing the language of GTC Section 2.11.3 and Appendix Pricing 1.6, the Proposed Order in Docket 05-0171 concluded that "[i]t is clear from the specific terms of the contract, that the parties agreed to amend their contract to incorporate new rates with an effective date the same as that contained in the Commission's Order, i.e., June 25, 2004." *Administrative Law Judge's Proposed Order*, Docket 05-0171 at 7 (Nov. 17, 2005). Assuming that this conclusion is affirmed by the Commission in its final Order in Docket 05-0171, it applies equally to the effective date issue in this case. There is no basis for treating Royal differently than other CLECs with respect to the effective date of the rates approved in Docket 02-0864.

Royal asserts that the effective date of the new rates approved in Docket 02-0864 is somehow affected by the fact that it did not receive a copy of AT&T Illinois' Notice and proposed Pricing Amendment until March 24, 2005. This assertion is without merit. Neither

GTC Section 2.11.3 nor Appendix Pricing Section 1.6 makes the effective date of the rates resulting from an Order in a generic proceeding such as Docket 02-0864 contingent upon one party providing the other party with a notice within prescribed proposed period of time after the issuance of the Order. Indeed, neither section imposes a notice obligation of any kind on either party. Nor does either section impose the obligation of initiating the amendment process on any particular party. Rather, as addressed above, GTC Section 2.11.3 and Appendix Pricing Section 1.6 simply provide that *both* parties have a mutual obligation to amend the Agreement to incorporate new rates to become effective on the effective date specified by the Order approving those rates.[3]

In this case, it so happens that AT&T Illinois initiated the process of amending the Agreement to incorporate the rates approved in Docket 02-0864. Although AT&T Illinois fully intended to provide Royal with the proposed Pricing Amendment in July of 2004 when it provided the proposed amendment to the other CLECs, it inadvertently failed to do so, an omission that was not discovered until March of 2005. Nothing in the Agreement, however, required AT&T Illinois (rather than Royal) to initiate the amendment process. Moreover, nothing prevented Royal from initiating the amendment process before March 24, 2005. Accordingly, the fact that Royal did not receive a Proposed Amendment from AT&T Illinois until March 24, 2005 does not, and should not, affect in any way the contractual obligation of both parties under GTC Section 2.11.3 and Appendix Pricing Section 1.6 to incorporate the rates approved in Docket 02-0864 into the Agreement with an effective date of June 25, 2004.

[3] AT&T Illinois is not suggesting that either party could wait indefinitely to enforce a claim under GTC Section 1.6. The Agreement provides that, "except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising under this Agreement more than twenty-four (24) months from the date of the

V. CONCLUSION

For all the reasons discussed, the Commission should issue an Order directing Royal to execute an amendment to its Interconnection Agreement with AT&T Illinois that incorporates all of the rates that were established in Docket 02-0864, effective beginning June 24, 2004, in accordance with the specific terms and conditions of AT&T Illinois' proposed Pricing Amendment. AT&T Illinois further requests that the Commission order the parties to execute and file the amendment within fourteen days after the issuance of the Order. AT&T Illinois further requests that, pending such approval, to prevent further delay in AT&T Illinois' ability to charge the UNE rates approved in Docket 02-0864, the Commission authorize AT&T Illinois to immediately bill Royal for past amounts due under the new rates beginning June 25, 2004 and to immediately begin billing Royal the new rates on a prospective basis.

Respectfully submitted,

ILLINOIS BELL TELEPHONE COMPANY

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One of Its Attorneys

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occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with exercise of due care and attention." Jt. Ex. 2, GTC Section 10.1.1.

CERTIFICATE OF SERVICE

I, Karl B. Anderson, an attorney, certify that a copy of the foregoing **INITIAL BRIEF OF AT&T ILLINOIS** was served on the following parties by U.S. Mail and/or electronic transmission on February 17, 2006.

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