

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
vs)	ICC Docket No. 06-0027
Illinois Bell Telephone Company)	
)	
Investigation of specified tariffs declaring)	
Certain services to be competitive)	
Telecommunications services.)	

**REBUTTAL TESTIMONY OF ANNE MCKIBBIN
ON BEHALF OF THE CITIZENS UTILITY BOARD**

CUB EXHIBIT 2.0, CORRECTED

REDACTED

March 24, 2006

REBUTTAL TESTIMONY OF ANNE MCKIBBIN

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1 **REBUTTAL TESTIMONY OF ANNE MCKIBBIN**
2 **ON BEHALF OF THE CITIZENS UTILITY BOARD**

3
4 **I. INTRODUCTION AND PURPOSE OF TESTIMONY**

5 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

6 A. My name is Anne McKibbin. My business address is 208 S. LaSalle Street, Suite 1760,
7 Chicago, IL 60604-1003.

8
9 Q. HAVE YOU SUBMITTED TESTIMONY IN THIS PROCEEDING?

10 A. Yes. I submitted CUB Exhibit 1.0, Direct Testimony on behalf of the Citizens Utility
11 Board, which was filed on March 6, 2005. That testimony contained my qualifications.

12
13 Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

14 A. I am testifying for the Citizens Utility Board (“CUB”).

15
16 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

17 A. The purpose of my rebuttal testimony is to respond to the direct testimony filed by AT&T
18 Illinois (“AT&T”), the Illinois Commerce Commission Staff, and the People of the State
19 of Illinois in this proceeding. Specifically:

- 20 • I will comment on areas where CUB agrees with the testimony of Staff witness Dr.
21 Genio Staranczak and the People’s witness Dr. Lee L. Selwyn.
- 22 • I will respond to Staff witness Dr. James Zolnierrek’s interpretation of the Illinois
23 Public Utility Act’s (“PUA”) public interest requirements and Dr. Selwyn’s
24 conclusions regarding the effect of reclassification on universal service.

- 25 • I will respond to assertions by AT&T witness W. Karl Wardin that wireless and
26 Voice-over-IP (“VoIP”) compete with measured service in MSA 1.
- 27 • I will respond to AT&T witness William E. Taylor’s belief that a market must only be
28 theoretically contestable to exert competitive pressure on AT&T services.
- 29 • Last, I will correct a minor point from my direct testimony.

30

31 Q. IS ANYONE ELSE FILING REBUTTAL TESTIMONY FOR CUB IN THIS
32 PROCEEDING?

33 A. Yes. Christopher Thomas will file testimony to rebut Staff witness Robert F. Koch and
34 AT&T witnesses Eric Panfil and David J. Barch. Mr. Thomas’ testimony also responds
35 to the policy options put forth by Staff witness Dr. Genio Staranczak in his direct
36 testimony.

37

38 **II. CUB AGREES WITH ICC STAFF AND THE ATTORNEY GENERAL THAT**
39 **MEASURED SERVICE IS NOT COMPETITIVE IN MSA 1**

40 Q. IS MEASURED SERVICE, AS DISCUSSED IN STAFF’S TESTIMONY, THE SAME
41 AS THE RESIDENTIAL LOCAL USAGE AND RESIDENTIAL NETWORK ACCESS
42 LINE THAT YOU DISCUSSED IN YOUR DIRECT TESTIMONY?

43 A. Yes. The local measured service that Staff discusses in its direct testimony is the same
44 service that I refer to as “Residential Local Usage and the Residential Network Access
45 Line” throughout my direct testimony.

46

47 Q. DO DRs. STARANCZAK AND SELWYN FAIRLY REPRESENT THE LACK OF
48 COMPETITION IN THE MEASURED SERVICE MARKET IN MSA 1?

49 A. Yes. I agree wholeheartedly with Drs. Staranczak and Selwyn that the local measured
50 service market is distinct from the market for bundled services. (Staff Ex. 1.0, line 103;
51 AG Ex. 1.0, pg. 23-24). Also, I agree that packaged offerings are not viable economic
52 substitutes for measured service. (Staff Ex. 1.0, lines 128-29; AG Ex. 1.0, pg. 26). This
53 is important because PUA Section 13-502 states that a service may only be reclassified as
54 competitive if a substitute service is reasonably available from more than one provider.
55

56 Q. DOES CUB'S POSITION DIFFER FROM THE TESTIMONY OF STAFF
57 WITNESSES STARANCZAK AND ZOLNIEREK?

58 A. Yes. As discussed further below, I disagree with Dr. Zolnierrek's interpretation of the
59 public interest requirements of PUA Section 13-103. Specifically, I believe that the most
60 important point in PUA's policy statement, relevant to this case, is that any
61 reclassification or related policy must be consistent with the Act's public interest and
62 universal service goals. The General Assembly clearly prefers competition as the means
63 of achieving these goals. However, the General Assembly's rewording of the statute
64 does not allow for a competitive declaration or any related policy that contradicts them.
65 The PUA's public policy and universal service goals are especially important in light of
66 the decline in telephone subscribership by Illinois households. The FCC has reported that
67 Illinois is the only state with a significant decrease in the number of households with
68 either a wireless or wireline telephone since 1983. (CUB Ex. 1.0, lines 860-61).
69

70 In addition, Christopher Thomas will file testimony to rebut Staff witness Robert F. Koch
71 and respond to the unnecessary policy options put forth by Dr. Staranczak in his direct
72 testimony. Mr. Thomas also disagrees with the imputation analysis presented by Mr.
73 Koch.

74

75 **III. THE COMMISSION MAY NOT ALLOW CLASSIFICATION OF A SERVICE**
76 **IF IT IS INCONSISTENT WITH PUA’S PUBLIC INTEREST AND**
77 **UNIVERSAL SERVICE GOALS**

78 Q. PLEASE DESCRIBE PUA’S PUBLIC INTEREST AND UNIVERSAL SERVICE
79 GOALS.

80 A. PUA 13.103(a) sets out the policy of the PUA regarding the public interest and universal
81 service: “telecommunications services should be available to all Illinois citizens at just,
82 reasonable, and affordable rates and that such services should be provided as widely and
83 economically as possible in sufficient variety, quality, quantity and reliability to satisfy
84 the public interest.”

85

86 Q. DO THESE GOALS REMAIN DESPITE STATUTORY CHANGES?

87 A. Absolutely. PUA Section 13.103(a) is included in the current version of the statute.

88

89 Q. HOW DO YOU RESPOND TO DR. ZOLNIEREK’S INTERPRETATION OF THE
90 CHANGES IN THE PUA STATUTE SINCE 1995?

91 A. I agree that the General Assembly’s changes to PUA Sections 13.102 (Findings) and
92 13.103 (Policy) indicate an intention to promote competition as a means of achieving the

93 Act's fundamental objectives. But, I disagree with Dr. Zolnierek's interpretation of the
94 public interest requirements of PUA Section 13-103.

95
96 Specifically, I believe that the most important point in the PUA's policy statement,
97 relevant to this case, is that any reclassification or related policy must be consistent with
98 the Act's public interest and universal service goals. The General Assembly clearly
99 prefers competition as the means of achieving these goals. However, the General
100 Assembly's rewording of the statute does not allow for a competitive declaration or any
101 related policy that contradicts its policy of "telecommunications service...available to all
102 Illinois citizens at just, reasonable, and affordable rates ... provided as widely and
103 economically as possible in sufficient variety, quality, quantity and reliability to satisfy
104 the public interest."

105
106 Q. HAS THE GENERAL ASSEMBLY CHANGED ITS FINDINGS AND POLICIES
107 REGARDING UNIVERSAL SERVICE AND THE PUBLIC INTEREST IN PUA?

108 A. No. The General Assembly did not change its findings in PUA Section 13.102(a)
109 regarding universal service: "universally available and widely affordable
110 telecommunications services are essential to the health, welfare and prosperity of all
111 Illinois citizens." Nor did it change its policy in PUA Section 13.103(a):
112 "telecommunications services should be available to all Illinois citizens at just,
113 reasonable, and affordable rates and that such services should be provided as widely and
114 economically as possible in sufficient variety, quality, quantity and reliability to satisfy
115 the public interest."

116 Q. MUST ANY SERVICE RECLASSIFICATION OR RELATED POLICY BE
117 CONSISTENT WITH THE UNIVERSAL SERVICE AND PUBLIC INTEREST
118 GOALS OF PUA SECTIONS 13.102(a) AND 13.103(a)?

119 A. Yes. Dr. Zolnierек asserts that the removal of one word, “when,” changes the entire
120 meaning of PUA Section 1303(b). Consequently, Dr. Zolnierек asserts, the protection of
121 customers is not a condition that must be fulfilled before competition replaces certain
122 aspects of regulation. But, removing “when” does not change the requirement that
123 competition be consistent with the protection of consumers.

124
125 The old policy in Section 1303(b) stated that “when consistent with the protection of
126 consumers of telecommunications services and the furtherance of other public interest
127 goals, competition should be permitted to function as a substitute for certain aspects of
128 regulation ...”

129
130 The new policy in Section 1303(b) states: “consistent with the protection of consumers
131 of telecommunications services and the furtherance of other public interest goals,
132 competition in all telecommunications service markets should be pursued as a substitute
133 for regulation ...” Thus, any reclassification making a service competitive must be
134 consistent with the protection of consumers and the furtherance of the public interest
135 goals.

136
137 Q. PLEASE COMMENT ON DR. SELWYN’S TESTIMONY THAT
138 RECLASSIFICATION WILL EITHER CAUSE SOME USERS TO DROP

139 TELEPHONE SERVICE ALTOGETHER OR WILL MOVE TO MORE EXPENSIVE
140 BUNDLED PACKAGES.

141 A. I agree with Dr. Selwyn's direct testimony on this point. As discussed in my direct
142 testimony, AT&T has a fundamental economic incentive to increase earnings and benefit
143 shareholders. AT&T has admitted, in its response to CUB D.R. 2.03, that one of its
144 purposes in declaring ****Begin Confidential** xx **End**
145 **Confidential**** competitive is to raise rates. Any action that will raise the price of the
146 most basic residential telephone services will force some households to disconnect from
147 the telephone system altogether, pushing Illinois farther from the General Assembly's
148 stated policy of providing affordable telecommunications services to all Illinoisans.

149
150 AT&T has noted in investor earnings briefings that its average revenue per user for
151 customers who subscribe to bundles is more than double that of a customer without a
152 bundle. (CUB Ex. 1.15 to McKibbin Direct). Thus, AT&T has an incentive to eliminate
153 basic services and force low-volume customers to choose a higher-priced bundle that is
154 more profitable for the company but includes services that customers do not want or
155 need.

156
157 If AT&T's measured service is reclassified as competitive without the presence of a
158 functional equivalent and substitute service available to every exchange in MSA 1, then
159 AT&T will be able to raise these rates to the level of the nearest offered package price
160 without the consequences inherent in competitive markets. Customers will have only two

161 choices: either leave the telephone system entirely and go without vital communication
162 services, or pay the higher price.

163

164 Q. CONSEQUENTLY, IS RECLASSIFICATION OF RESIDENTIAL MEASURED
165 SERVICE IN THE PUBLIC INTEREST?

166 A. No. PUA's public interest goals include "telecommunications services should be
167 available to all Illinois citizens at just, reasonable, and affordable rates and that such
168 services should be provided as widely and economically as possible." Residential
169 measured service is not competitive. Thus, customers will not benefit from
170 reclassification. Instead, some will leave the telephone system entirely while others
171 move to higher priced packages that contain services that they do not need. Thus,
172 reclassification of residential measured service is in direct conflict with PUA's public
173 interest goals.

174

175 Q. PLEASE RESPOND TO SUGGESTIONS BY DRS. ZOLNIEREC AND
176 STARANCZAK THAT ANY ACTION THAT RESULTS IN MEASURED SERVICE
177 RATES OF \$20.39 OR LESS IS IN THE PUBLIC INTEREST.

178 A. Dr. Zolnierек suggests, in his direct testimony at lines 2016-2024, that reclassifying a
179 package such as Saver Pack 30, which his own evidence shows is non-competitive, "need
180 not be contrary to the public interest." To support this claim, he points to the
181 Commission's 2002 Universal Service proceeding, Docket 00-0233, where the
182 Commission determined that \$20.39 "is an affordable rate for consumers to pay for basic
183 phone service." Thus, he surmises that a rate increase to \$20.39 is in the public interest.

184 Dr. Staranczak also invokes the \$20.39 rate level to show that access line rate increases
 185 will not result in rate shock. (ICC Staff Ex. 1.0, line 454). Table 1, below, compares this
 186 \$20.39 rate to the current AT&T measured service rate.

187 **Table 1**

Rate Comparison for AT&T Measured Service Customers Who Make 100 Calls Per Month				
		<u>AT&T</u>		<u>Effective Rate Increase</u>
Area A	\$20.39	Network Access Line:	\$2.55	267%
		Local Usage:	<u>3.00</u>	
		Total AT&T Price:	\$5.55	
Area B	\$20.39	Network Access Line:	\$5.53	139%
		Local Usage:	<u>3.00</u>	
		Total AT&T Price:	\$8.53	

188
 189 It strains the imagination to think that a rate increase that more than triples the price of
 190 basic measured service for Area A customers is in the public interest and will not cause
 191 rate shock.

192
 193 Q. WOULD REBALANCING MEASURED SERVICE RATES UP TO \$20.39 HAVE
 194 THE SAME EFFECT AS RECLASSIFYING THOSE SERVICES AS COMPETITIVE?

195 A. Yes. If AT&T's measured service is reclassified as competitive without the presence of a
 196 functional equivalent and substitute service available to every exchange in MSA 1, then
 197 AT&T will be able to raise these rates to the level of the nearest offered package price
 198 without the consequences inherent in competitive markets. The least expensive packages
 199 offered by other providers are priced around \$20, excluding the federal subscriber line
 200 charge. Thus, rebalancing measured service rates up to \$20.39 would have
 201 approximately the same effect as allowing noncompetitive measured service to be
 202 deregulated.

203

204 Q. WOULD REBALANCING RATES OF UP TO \$20.39 COMPLY WITH THE
205 UNIVERSAL SERVICE AND PUBLIC INTEREST REQUIREMENTS OF PUA
206 SECTION 13-103?

207 A. No. In the same way as reclassifying measured service, allowing a rebalancing of
208 measured service rates up to \$20.39 is in direct conflict with PUA's public interest goals.
209 Allowing these rates to rise to \$20.39 will cause some users to leave the telephone system
210 entirely, worsening Illinois' low household penetration rate. This is especially
211 disconcerting when considering that AT&T's existing measured service rates are above
212 cost, as demonstrated by Mr. Thomas in his rebuttal testimony.

213

214 IV. **VOIP AND WIRELESS USE DO NOT COMPETE WITH MEASURED**
215 **SERVICE IN MSA 1**

216 Q. ARE VOIP AND WIRELESS SERVICE ECONOMIC SUBSTITUTES FOR
217 MEASURED SERVICE?

218 A. No. Dr. Staranczak testifies that VoIP is not a viable economic substitute for measured
219 service because it requires customers to subscribe to broadband service. Consequently,
220 as Staff asserts, "[f]or households who do not subscribe to broadband, VoIP telephony is
221 ... not a viable alternative. For households that do subscribe to broadband, VoIP
222 telephony can be substantially more expensive than the measured service offered by
223 AT&T Illinois." (Staff Ex. 1.0, lines 235-43). Dr. Selwyn similarly testified that VoIP
224 services are not economic substitutes for measured service because of the need to buy
225 broadband service. (AG Ex. 1.0, pg. 30-31). I agree with Drs. Staranczak and Selwyn on

226 this point, and cited similar reasoning in my own direct testimony. (CUB Ex. 1.0, lines
227 385-402).

228
229 In addition, Dr. Staranczak testifies that wireless packages are not substitutes for
230 measured service because prices of the wireless packages offered in the marketplace are
231 significantly higher than measured service rates. (Staff Ex. 1.0, lines 245-54). Dr.
232 Selwyn similarly testified: “there is no existing wireless service being offered at a price
233 that would operate to constrain IBT’s [Illinois Bell Telephone’s] price for a stand-alone,
234 basic local exchange line.” (AG Ex. 1.0, pg. 35). I agree with Drs. Staranczak and
235 Selwyn on this point, and cited similar reasoning in my own direct testimony. (CUB Ex.
236 1.0, lines 336-53).

237

238 Q. DOES AT&T MARKET ITS WIRELESS AND WIRELINE TELEPHONE SERVICES
239 AS SUBSTITUTES?

240 A. No. As I discussed in my direct testimony AT&T markets its wireless and wireline
241 services as complementary additions to one another, not as replacements or substitutes
242 for one another. (CUB Ex. 1.0, lines 528-564). AT&T submitted 32 separate marketing
243 materials in its Response to CUB Discovery Request 3.04, each showing that AT&T
244 markets landline services jointly with Cingular Wireless services. AT&T’s marketing
245 efforts recognize that its customers want landline service at home, in addition to wireless
246 service when they are away from home. In addition, according to AT&T’s Response to
247 CUB 2.13, over ****Begin Confidential xxxxxx End Confidential**** customers in MSA 1

271 reason for this conflict. Nonetheless, my conclusion remains the same: with or without
272 Lifeline, cable-provided telephone services are not a substitute for AT&T's Residential
273 Network Access Line and Residential Local Usage.

274

275 **VII. CONCLUSION**

276 Q. PLEASE SUMMARIZE YOUR TESTIMONY

277 A. CUB agrees wholeheartedly with Staff and The Attorney General's testimony that
278 measured service is not competitive in MSA 1 and that wireless and VoIP services do not
279 substitute for measured service. CUB disagrees, however, with Staff's interpretation of
280 the PUA's public interest requirements, which would not require reclassification to meet
281 the public interest and universal service goals of the PUA, and would allow measured
282 service rates to be increased to a maximum of \$20.39. The Commission must not allow
283 reclassification of measured service as competitive because it directly contradicts the
284 PUA's stated goal that "telecommunications services should be available to all Illinois
285 citizens as just, reasonable, and affordable rates and that such services should be provided
286 as widely and economically as possible." In addition, AT&T witness Taylor's assertion
287 that potential market entrants exert competitive pressure on this market is incorrect. His
288 reliance on the theory of contestable markets is misplaced, since this market does not
289 satisfy the theory's basic assumptions. Thus, the Commission should find that measured
290 service is not competitive and should order AT&T to reverse its reclassification.

291

292 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

293 A. Yes.