

AT&T Ex 1050
 Admitted
 2/17/06
 [Signature]

STATE OF ILLINOIS
 ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company,)
 AT&T Communications of Illinois, Inc.,)
 TCG Illinois, TCG Chicago, TCG St. Louis,)
 WorldCom, Inc.,)
 McLeodUSA Telecommunications Services, Inc.,)
 XO Illinois, Inc.,)
 NorthPoint Communications, Inc.,)
 Rhythms Netconnection and Rhythms Links, Inc.,)
 Sprint Communications L.P.,)
 Focal Communications Corporation of Illinois,)
 and)
 Gabriel Communications of Illinois Inc.)

No. 01-0120

OFFICIAL FILE

IC C DOCKET NO. 01-0120
 AT&T Exhibit No. 1050
 Witness
 Date 2/17/06 Reporter TR

Petition for Resolution of Disputed Issues)
 Pursuant to Condition (30) of the SBC/Ameritech)
 Merger Order.)

AT&T ILLINOIS' VERIFIED PRE-HEARING MEMORANDUM

Pursuant to the Commission's Order of January 11, 2005, Illinois Bell Telephone Company ("AT&T Illinois," formerly known as "SBC Illinois" or "Ameritech Illinois") respectfully submits its verified pre-hearing memorandum on remand from the Illinois Appellate Court's order in *McLeodUSA Telecommunications Services, Inc. v. Illinois Commerce Comm'n*, Case No. 3-04-0594 (Ill. App. 3d Dist. Aug. 31, 2005) ("*McLeodUSA*"), which in turn addressed the Court's decision in *Illinois Bell Tel. Co. v. Illinois Commerce Comm'n*, 343 Ill. App. 3d 249, 797 N.E.2d 716 (3d Dist. 2003) ("*Illinois Bell*"). Pursuant to the ALJ's instructions at the November 1, 2005 pre-hearing conference, AT&T Illinois addresses the following issues:

- I. Whether the Commission has legal authority to extend the October 8, 2002 termination date of the "remedy plan" that was established by Condition 30 of the 1999 SBC/Ameritech merger order and modified in this docket;

II. Whether the Commission has jurisdiction over AT&T Illinois remedy payments (and over any efforts by AT&T Illinois to seek restitution of such payments from competing carriers); and

III. Whether competing local exchange carriers ("CLECs") are entitled as a matter of policy to an extension of the "01-0120 remedy plan" beyond October 8, 2002, if the Commission has legal authority to grant such an extension.

In accordance with the ALJ's directions at the January 12, 2005 status, AT&T Illinois does not respond here to the arguments raised by Staff and the competing local exchange carriers ("CLECs") in their prehearing memoranda and pre-filed testimony. Rather, AT&T Illinois reserves its right to respond to those arguments in its pre-filed testimony, at the evidentiary hearing, and in post-hearing briefs. AT&T Illinois also incorporates by reference the legal arguments and factual bases regarding the duration of the remedy plan presented in its post-hearing briefs (filed September 28 and October 18, 2001); exceptions briefs (filed April 11 and 29, 2002); motion to abate proceedings (June 7 and 17, 2002); rehearing brief (August 9, 2002); application for rehearing of Order on Reopening (October 21, 2002); comments on first remand (January 4 and February 13, 2004); reply to exceptions on first remand (April 22, 2004); and pre-filed testimony on second remand (served December 14, 2005 and January 5, 2006).

BACKGROUND

As this case is on remand from the Appellate Court, a brief recap of the prior Commission and judicial proceedings in this docket is essential to answering the questions posed by the ALJ and setting a proper framework for further proceedings in this docket.

The "01-0120" Remedy Plan. AT&T Illinois implemented a performance assurance plan as Condition 30 of the Commission's approval of the merger between SBC and Ameritech in 1999. The 1999 *Merger Order* provided that *all* conditions "shall cease to be effective and

shall no longer be binding in any respect three years after the Merger Closing Date," unless some different term was "specifically established" in that order. *Illinois Bell*, 343 Ill. App. 3d at 251. Condition 30 did not "specifically establish an alternative closing date" and thus, pursuant to the plain language of the *Merger Order*, it was to expire on October 8, 2002 (three years after the merger closing date). *Id.* at 251, 252-53.

As part of Condition 30, the Commission's 1999 order directed AT&T Illinois to participate in collaborative discussions with CLECs regarding possible changes to the performance assurance plan. The parties reached agreement on performance measures and standards, but were unable to agree on remedies. In addition, the CLECs and Staff argued that the Condition 30 Remedy Plan should continue beyond October 8, 2002, a position that AT&T Illinois opposed as contrary to the *Merger Order*. The Commission opened the instant Docket No. 01-0120 to resolve these disputes.

In a Final Order dated July 10, 2002, the Commission directed AT&T Illinois to make certain modifications to the plan. It then ordered AT&T Illinois to make the modified "01-0120 plan" available not only to carriers with interconnection agreements but also by tariff, even to carriers that did not have an interconnection agreement with AT&T Illinois. At the same time, however, the Commission reiterated that the plan would expire at the end of the three-year term for Condition 30, that is, on October 8, 2002. As the Commission explained:

The only conclusion that can be reached is that Condition 30, and consequently the Remedy Plan, expires in three years. . . . [N]o party has given us a legal basis for extending the deadlines included in the *Merger Order*. We are therefore left with the conclusion that the Remedy Plan, as a condition to merger approval, expires in three years from the merger closing date, or October 2002.

But on October 1, 2002, after AT&T Illinois filed a modified tariff reflecting the October 8 expiration date, the Commission reopened this Docket and issued an order directing Ameritech

Illinois to delete the expiration date. AT&T Illinois sought judicial review of the Commission's orders, but pending such review it filed a compliance tariff.

The Appellate Court's Decision in *Illinois Bell*. On August 29, 2003, the Appellate Court issued its decision in *Illinois Bell*. The Court held that the Commission acted contrary to federal law when it directed AT&T Illinois to pay remedies by tariff to carriers who had not entered into an interconnection agreement, as required by the federal Telecommunications Act of 1996. In the Court's words, "the order of the Commission in the case at bar has the . . . effect of bypassing the process set forth in section 252 of the Act" because the Commission purported to "ensure[] that those carriers that do not have an Interconnection Agreement with Ameritech will have the benefit of the Remedy Plan." 343 Ill. App. 3d at 258.

The Court also held that the Commission "impermissibly expanded [the] duration" of the remedy plan. *Id.* As the Court explained, the Order on Reopening erred in stating that there was no "sunset or automatic termination" for the plan, because "when the Commission used the words 'the Remedy Plan . . . expires in three years from the merger closing date,' [in the July 10, 2002 Final Order], it did set a sunset and automatic termination date." *Id.* at 259.

"Moreover," the Court added, "the Commission violated due process by failing to give notice" to AT&T Illinois of the Order on Reopening. *Id.* The Court explained that "the Commission's power to rescind, alter, or amend its own order" under section 10-113 of the Public Utilities Act "can only be exercised after providing notice by means of a written complaint setting forth an alleged violation of the Act, order or rule of the Commission" and "an opportunity to be heard." *Id.* (quoting *Quantum Pipeline Co., v. Illinois Commerce Comm'n*, 304 Ill. App.3d 310, 319 (1999)). By contrast, in issuing the Order on Reopening "[n]ot only did the Commission fail to notify Ameritech of any hearing or proceeding upon which the order on

reopening was granted, it also summarily denied Ameritech's application for rehearing." *Id.* Accordingly, the Court reversed the applicable portions of the Commission's orders and remanded "to enter an order consistent with this opinion and afford petitioner due process." *Id.* at 260.

Subsequent Commission Decisions on Remedy Plans. On December 30, 2002, while *Illinois Bell* was pending, the Commission entered an order in Docket Nos. 98-0252, 98-0335, and 00-0764 (consolidated). In that docket, the Commission was considering AT&T Illinois' proposed new plan for Alternative Regulation, which was to replace the plan that had been established in 1994. Among other things, the Commission ordered that the 01-0120 Plan be incorporated into the new Alternative Regulation Plan. The Commission, however, rejected the proposal of Staff and the CLECs to extend the 01-0120 Plan indefinitely. Instead, recognizing that wholesale performance issues were also the subject of other proceedings (most notably the Commission's then-pending investigation of compliance with Section 271 of the Telecommunications Act of 1996), the Commission stated that the 01-0120 Plan would only be "effective up to and until a wholesale performance measure plan for Section 271 purposes is approved by this Commission." Dec. 30, 2002 Order, Docket Nos. 98-0252, 98-0335, and 00-0764 (consol.) at 190.

On appeal, the Appellate Court upheld in part the Commission's decision: It held that the Commission could "incorporate and impose the Condition 30 remedy plan as a condition of continued alternative regulation" but reiterated that the Commission could not make the plan available by tariff. *Illinois Bell Tel. Co. v. ICC*, 352 Ill. App. 3d 630, 638 (3d Dist. 2004). The Court admonished that "[n]othing in the [Public Utilities] Act, even the independent authority for

alternative regulation found in section 13-506.1, gives the Commission the power to controvert federal law." *Id.*

As noted above, the December 30, 2002 Alternative Regulation Order incorporated the "01-0120 plan" only on an interim basis, pending approval of a replacement "plan for Section 271 purposes." On May 13, 2003, the Commission approved a modified plan for Section 271 purposes in Docket No. 01-0662, in connection with its comprehensive analysis of AT&T Illinois' wholesale performance. After ordering AT&T Illinois to make several modifications to its proposed replacement remedy plan, the Commission approved the plan, as modified, stating that the plan "is now the approved Section 271 Plan and will be known and referenced by such terms." May 13, 2003 Final Order, Docket No. 01-0662, ¶ 3508. As the Commission explained, further continuation of the 0120 Plan was not warranted (*id.* ¶¶ 3541-3542):

We recognize that the 0120 Plan was designed in, under and for, a different set of circumstances. In that old and much different environment, we are reminded that: (i) comprehensive performance measures and standards had only recently been introduced, (ii) post-merger OSS enhancements (such as the implementation of version 4 of the Local Service Ordering Guide) were still under development, (iii) the third-party OSS test was just getting started. These factors, SBC Illinois contends, all contributed to overall performance being far less good than it is today. Responsibly, the Commission's focus at the time was on spurring improvement.

We acknowledge, as indeed we must, that the environment in which we are analyzing SBC Illinois' Compromise Plan is much changed. Today, we observe a more extensive but equally telling set of data. The undisputed evidence shows that since the latter part of year 2000, i.e., the record period for Docket 01-0120, and up to this date, wholesale performance has improved to a significant and sustained level and there are no indications that it will not stay on track. It is well shown that SBC Illinois' performance has improved from 75 to 80% compliance in the fall of year 2000 to 90 and 93% compliance in the fall of year 2002.

In accordance with the Commission's orders in the Alternative Regulation and Section 271 dockets, AT&T Illinois implemented the Section 271 Plan. No party sought judicial review of the Commission's order. Shortly thereafter, the FCC approved AT&T Illinois' application to

provide long-distance service in Illinois. *In re Joint Application by SBC Communications, Inc., et al.*, 2003 WL 22350344, 18 F.C.C. Rcd. 21,543, ¶ 1 (2003). In so doing, the FCC reviewed the Section 271 Plan and concluded that it “provide[s] assurance that local markets will remain open after SBC receives section 271 authorization.” *Id.* ¶ 168. Accordingly, it upheld the Commission’s conclusion “that the plan, along with other oversight and enforcement authority of the [Commission] and the FCC, would help ensure that SBC continues to comply with its checklist obligations post-entry.” *Id.* ¶ 172.

The Commission’s Order on Remand. Shortly after the Commission’s approval of the new remedy plan (and while the FCC’s review was ongoing), the Appellate Court issued its decision in *Illinois Bell*, which charged the Commission with two tasks: (1) to “afford [AT&T Illinois] due process,” and (2) to enter an order consistent with the Court’s opinion, which, among other things, found that there was no legal basis to extend the remedy plan past October 8, 2002. *Illinois Bell*, 343 Ill. App. 3d at 260. But as discussed above, by the time of the remand the Commission had already terminated and replaced the “01-0120” plan that was at issue in *Illinois Bell I*. Thus, in its *Order on Remand*, the Commission found that “the tariff in question has expired, and, the Remedy Plan established pursuant to the docket at bar has been superceded. Indeed, no party here contends that the tariff in question even exists anymore. Therefore, with respect to tariffing the 01-0120 Remedy Plan, there is nothing further to adjudicate.” May 11, 2004 Order on Remand, Docket No. 01-0120, at 8. The Commission also held that its initial conclusion in the July 10, 2002 Final Order that the merger condition and the associated remedy plan expired on October 8, 2002 (which the Commission had described as “the only conclusion that can be reached”) was “legally valid” and that no party challenged its construction of the

merger condition. *Id.* “Accordingly, the July 10, 2002 Order stands, as well as its expiration date for Condition 30, the Remedy Plan, and the tariffed Remedy Plan on October 8, 2002.” *Id.*

In the remand proceeding, McLeodUSA, MCI and AT&T requested that the Commission reach the issue of whether the 01-0120 Remedy Plan should be retroactively reinstated from October 8, 2002 (the expiration of Condition 30) to December 30, 2002 (the date of the Commission’s alternative regulation order). The Commission found that issue to be a predicate to addressing a potential contract dispute regarding whether these CLECs might be required to repay the money paid to them by AT&T Illinois under compulsion of the Commission’s *Order on Reopening*, after the Appellate Court had held that the order “impermissibly expanded” the plan’s duration. The Commission, however, declined to reach that issue, finding instead that “any determination with regard to overpayments SBC claims to have made are contractual disputes, separate and distinct from the issues at bar, as those matters concern specific application of provisions in the Remedy Plan to specific sets of facts.” *Id.* The Commission determined that “[w]e cannot decide these issues in this docket, as they are outside the scope of this proceeding.” *Id.* at 11.

The Appellate Court’s Order in *McLeodUSA*. On August 2, 2004, McLeodUSA filed a petition for review of the Commission’s *Order on Remand*. The Court entered an unpublished Order dated August 31, 2005. It held that the Commission “erred in not holding a hearing for the purpose of deciding whether or not the remedy plan should have been extended beyond October 8, 2002.” *McLeodUSA*, slip op. at 11. It remanded “with directions to conduct a hearing and determine whether the remedy plan should have been extended beyond October 8, 2002 through December 30, 2002 [when the Alternative Regulation Plan took effect].” *Id.* at 16.

DISCUSSION

I. SCOPE OF THE COMMISSION'S LEGAL AUTHORITY

The ALJ is quite correct to pose the question whether the Commission has legal authority to extend the termination date of the 01-0120 plan, as that is the threshold issue for this proceeding. The Commission has already decided – in both the *Merger Order* and the July 10, 2002 Final Order in this Docket – that the plan was to expire on October 8, 2002. Simply put, the Commission was correct in setting that date.

The *McLeodUSA* Order states that the “proper procedure on remand” is “to allow, as provided by section 10-113(a), an opportunity to be heard as provided in the case of complaints.” Slip op. at 11. In turn, *Illinois Bell* explains that under section 10-113(a) “the Commission’s power to rescind, alter, or amend its own order can only be exercised after providing notice by means of a written complaint setting forth an alleged violation of the Act, order or rule of the Commission” and “an opportunity to be heard.” 343 Ill. App. 3d at 259 (quoting *Quantum Pipeline*, 304 Ill. App.3d at 319). Thus, a proper “notice” and “opportunity to be heard” must identify some legal basis for further proceedings, be it some provision of the Public Utilities Act, Commission order, or rule, or otherwise. Such notice would allow AT&T Illinois (and other participants) to identify the legal standards that will govern the proceedings, and to present evidence and argument in accordance with those standards. Ultimately, it will allow the Commission to reach and articulate a reasoned decision on those standards. A freeform debate on the merits of revision, devoid of any governing legal standards, would hardly comport with the Appellate Court’s mandates that the Commission provide due process.

1. At the November 1, 2005 status hearing, counsel for McLeodUSA suggested that the Appellate Court had already decided in *McLeodUSA* that the Commission had legal authority to extend the plan. That is not true, and is in fact contrary to the Appellate Court’s mandates, as

is evident from the *McLeodUSA* decision, which does not identify any substantive authority on which the plan could be extended. All the Court decided was that the Commission had *procedural* authority (under section 10-113 of the Public Utilities Act) to *consider* an extension, and that the Commission erred by failing to conduct further proceedings on the issue. Slip op. at 11. That brings us back to the Court's original mandate in *Illinois Bell*, which *McLeodUSA* simply enforced: that any such proceedings would require advance notice (including notice of the legal authorities at issue) and an opportunity to be heard.

2. As of the date of its initial prehearing memorandum, the only possible legal basis *McLeodUSA* has suggested is the Alternative Regulation statute, section 13-506.1 of the Public Utilities Act. That statute, however, merely gives the Commission authority to review, modify, and approve a comprehensive plan of Alternative Regulation. As described above, the Commission conducted that review in the Alternative Regulation dockets, and approved a plan on December 30, 2002. True, *that* plan included the 01-0120 "remedy plan," but it did not take effect until December 30, and even then it included many other components other than the remedy plan. Here, the CLECs are seeking something very different. First, they seek a freestanding remedy plan, *not* one that is part of a comprehensive package for Alternative Regulation.

Second, they seek a plan that would take effect on October 8, 2002. At that time, the Commission-approved Alternative Regulation plan that was in effect did not include a wholesale remedy component. The Commission's review of a new plan was still in progress in the Alternative Regulation dockets, and in those dockets *no* CLEC asked the Commission to expedite its review or approve a new alternative regulation plan as of the October 8 termination date of Condition 30 – even though the CLECs were well aware of the Commission's July 10,

2002 Final Order holding that the 01-0120 plan would expire on that date. Thus, the CLECs cannot proceed under Alternative Regulation here.

3. To the extent that Staff or any CLEC has advanced any other possible basis for further proceedings, AT&T Illinois will of course respond in accordance with the procedural schedule adopted by the Commission. Whatever legal authorities might be at issue in this proceeding, however, one thing is clear. The Commission has no legal authority to extend the 01-0120 plan for CLECs that do not have a right to remedies under an interconnection agreement. The Appellate Court has held – twice – that the Commission cannot require AT&T Illinois to offer remedies by tariff, or to CLECs that do not have interconnection agreements, because such a requirement “subverts” federal law. The second time around, the Court went so far as to admonish that “[n]othing in the [Public Utilities] Act, even the independent authority for alternative regulation found in section 13-506.1, gives the Commission the power to controvert federal law.” *Illinois Bell Tel. Co. v. ICC*, 352 Ill. App. 3d at 638. Thus, neither *Illinois Bell* nor *McLeodUSA* calls for further proceedings on the tariff issue – naturally so, because the Court has already decided it. Rather, *Illinois Bell I* directed the Commission to “enter an order consistent with [the Court’s] opinion.”

II. SCOPE OF AUTHORITY OVER PAST REMEDY PAYMENTS

The ALJ has also asked the parties to address the Commission’s authority over past remedy payments, and any AT&T Illinois efforts to recover those payments from individual CLECs. Such issues are outside the scope of the remand and of this proceeding, for two reasons. First, the Commission has already held that “any determination with regard to overpayments SBC claims to have made are contractual disputes, separate and distinct from the issues at bar, as those matters concern specific application of provisions in the Remedy Plan to specific sets of

facts.” May 11, 2004 Order on Remand, at 8. By contrast, this docket “only concerns what should be, generally, in a Remedy Plan.” *Id.* at 9. The Appellate Court did not disturb that holding; in fact, it agreed with the Commission that “disagreements between Illinois Bell and the CLECs concerning overpayments should be addressed through the dispute resolution processes contained in their contracts.” *McLeodUSA*, slip op. at 15. All it held was that the Commission had to address the threshold, generic issue of “whether the remedy plan should be extended beyond October 8, 2002.” *Id.*

Second, carrier-specific payment issues are already before the Illinois courts. AT&T Illinois filed suit against several carriers seeking restitution of remedy payments for the period October 8, 2002 – June 30, 2003, on the ground that those carriers received payments under the unlawful tariff (an issue that is not before the Commission on remand, as described in the preceding section). Those carriers accepted the circuit court’s jurisdiction and filed a motion to decide that case on the merits. The circuit court entered an order on January 10, 2006 dismissing AT&T Illinois’ complaint against certain carriers, but AT&T Illinois intends to appeal from that decision.

III. WHETHER THE 01-0120 PLAN SHOULD BE EXTENDED, IF THE COMMISSION HAS LEGAL AUTHORITY TO EXTEND THE PLAN

The third and final preliminary question is: *if* the Commission has legal authority to extend the 01-0120 remedy plan for the period October 8 – December 30, 2002, should it exercise that authority? AT&T Illinois respectfully submits that the answer is “no.”¹

The typical rationale CLECs give for a remedy plan is that it gives the incumbent an incentive to provide good quality service. There is no basis whatsoever for that rationale here.

¹ The factual statements in this Section III have been verified by Mr. James D. Ehr, Director of Performance Measures for AT&T Illinois. Mr. Ehr’s current job responsibilities, employment experience, and educational background are set forth in his pre-filed testimony

By definition, incentives can only apply to motivate *future* performance. Here, the Carriers are seeking to retroactively impose a remedy plan that would apply solely to *past* performance (i.e. October - December 2002). There is *no* incentive plan in the world that could affect *past* performance, because no one can change the past.

Moreover, the CLECs' incentive argument overlooks the fact that the 01-0120 plan was not the only remedy option available. One CLEC (TDS) entered into a compromise that allowed it to receive payments under the 01-0120 Plan pending the Appellate Court's decision, while leaving a backup plan in place in the event that the 01-0120 Plan was reversed on appeal. May 7, 2003 Order, Docket No. 03-0098. The Commission approved that agreement in Docket No. 03-0098, and ultimately, the Commission approved the plan as the standard for all CLECs (with some modifications) in the Section 271 docket, No. 01-0662.

In addition, the "incentive" theory ignores that a remedy plan is not the only incentive for good performance. That principle applies with particular force for the October - December 2002 period at issue here. At that time, the Commission was investigating AT&T Illinois' compliance with the wholesale "checklist" under Section 271, in order to advise the FCC on AT&T Illinois' planned application to provide long-distance service. Further, the Commission was reviewing AT&T Illinois' proposed Alternative Regulation plan, and wholesale performance was an issue in that proceeding. Given the pendency of these proceedings, coupled with the "normal" incentives for good performance - such as AT&T Illinois' desire to maintain a reputation for quality, the possibility that a CLEC affected by poor performance could file a complaint with the Commission, and the existence of other remedy plans - AT&T Illinois already had ample incentives to maintain good wholesale service quality.

To confirm the above principles, the Commission also has the benefit of experience. During the October – December 2002 period, AT&T Illinois' wholesale performance *improved* over the previous months, and AT&T Illinois met over 90 percent of performance measures subject to remedies, even though its ultimate obligation to pay remedies in that period was uncertain. Further, after the termination of the 01-0120 plan in June 2003, AT&T Illinois' performance continued to improve, with AT&T Illinois meeting over 90 percent of remedied measures in all but one month. The following chart summarizes the results:

MONTH	% MET ²	COMMISSION-ORDERED PLAN IN EFFECT
September 2002	89.8	01-0120 Plan
October 2002	90.7	Currently at issue
November 2002	91.8	Currently at issue
December 2002	90.1	Currently at issue
January 2003	85.1	01-0120 Plan
February 2003	88.0	01-0120 Plan
March 2003	90.1	01-0120 Plan
April 2003	89.9	01-0120 Plan
May 2003	88.8	01-0120 Plan
June 2003	88.2	01-0120 Plan
July 2003	92.4	Section 271 Plan
August 2003	88.7	Section 271 Plan
September 2003	93.0	Section 271 Plan
October 2003 (271 approval)	93.5	Section 271 Plan
November 2003	94.4	Section 271 Plan
December 2003	94.2	Section 271 Plan

And in 2004 – after AT&T Illinois had entered the long-distance market – the compliance rate was above 90 percent in every month, and better than 93 percent in several months.

² Percentage met, of measures subject to remedies under applicable remedy plan.

Finally, AT&T Illinois observes that reinstatement of the 01-0120 plan would be unfair, as it would permit CLECs to evade the consequence of their own tactical decisions. The Commission's July 10, 2002 Final Order gave CLECs ample notice that the 01-0120 plan would expire in October, and ample time to negotiate a successor plan with AT&T Illinois, or to seek an extension under some other body of law. And after the Commission reversed course in the October 1, 2002 Order on Reopening, the CLECs knew full well that AT&T Illinois would appeal. They had every opportunity to negotiate a remedy plan for October – December 2002; indeed, one carrier (TDS) did so. The others did not. Plainly, the CLECs elected to “roll the dice” on the 01-0120 Plan in court – and lost. That was the Carriers' decision to make then – and it is the decision they must live with now.

CONCLUSION

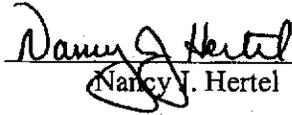
As set forth above, AT&T Illinois' position is that (i) the Commission has no legal authority to extend the duration of the 01-0120 plan beyond October 8, 2002; (ii) the Commission has no jurisdiction to address in this docket AT&T Illinois' past payments or its attempt to recover those payments; and (iii) as a matter of policy, the Commission should not extend the duration of the 01-0120 to the October 8, 2002 – December 30, 2002 period, even if it had legal authority to do so. At the conclusion of proceedings on remand, AT&T Illinois respectfully intends to ask the Commission to enter an order to that effect.

Demetrios G. Metropoulos
Mayer, Brown, Rowe & Maw LLP
190 South LaSalle Street
Chicago, IL 60603
(312) 782-0600

Nancy J. Hertel
AT&T Illinois
225 West Randolph St., Floor 25
Chicago, IL 60606
(312) 727-4517

CERTIFICATE OF SERVICE

I, Nancy J. Hertel, an attorney, certify that a copy of the foregoing **AT&T ILLINOIS'**
VERIFIED PRE-HEARING MEMORANDUM was served on the following parties by
regular U.S. Mail and/or electronic transmission on January 23, 2005.



Nancy J. Hertel

SERVICE LIST FOR DOCKET 01-0120

Claudia Sainsot
Illinois Commerce Commission
160 North LaSalle, Suite C-800
Chicago, IL 60606
csainsot@icc.illinois.gov

Christine F. Binnig, Theodore A.
Livingston, Demetrios G.
Metropoulos, Angela O'Brien,
Hans Germann, John E. Muench
Mayer Brown Rowe & Maw
71 South Wacker Drive
Chicago, IL 60606
cbinnig@mayerbrownrowe.com
tlivingston@mayerbrownrowe.com
demetro@mayerbrownrowe.com
aobrien@mayerbrownrowe.com
hgermann@mayerbrownrowe.com
jmuench@mayerbrownrowe.com

Claudia J. Earls
Z-Tel Communications, Inc.
601 South Harbour Island Blvd.
Suite 220
Tampa, FL 33602
cearls@z-tel.com

Stefanie Glover
Illinois Commerce Commission
160 North LaSalle, Suite C-800
Chicago, IL 60606
sglover@icc.illinois.gov

William Haas
McLeodUSA
6400 C Street SW
Cedar Rapids, IA 52406
whaas@mcleodusa.com

Glenn A. Harris
NorthPoint Communications, Inc.
303 Second Street
South Tower
San Francisco, CA 94107
gharris@northpoint.net

Andrew O. Isar
Association of Communications
Enterprises
7901 Skansie Avenue, Suite 240
Gig Harbor, WA 98335
aisar@millerisar.com

Brett D. Leopold
Sprint
6450 Sprint Parkway
KSOPHN0212-2A461
Overland Park, KS 66251
brett.d.leopold@mail.sprint.com

Owen E. MacBride
Schiff Hardin & Waite
233 South Wacker Drive
6600 Sears Tower
Chicago, IL 60606
omacbride@schiffhardin.com

Samuel S. McClerran
Illinois Commerce Commission
527 East Capital Avenue
Springfield, IL 62701
smcclerr@icc.illinois.gov

Stephen J. Moore, Kevin Rhoda,
Thomas Rowland
Rowland & Moore
200 West Superior, Suite 400
Chicago, IL 60610
steve@telecomreg.com
krhoda@telecomreg.com
tom@telecomreg.com

Nora A. Naughton
Illinois Commerce Commission
160 North LaSalle, Suite C-800
Chicago, IL 60606
nnaughto@icc.illinois.gov

Thomas O'Brien
Bricker & Eckler, L.L.P.
100 South Third Street
Columbus, OH 43215
tobrien@bricker.com

Edward Pence
McLeodUSA Telecommunications
Services, Inc.
121 South 17th Street
Mattoon, IL 61938
Edward.pence@consolidated.com

Carol P. Pomponio
XO Illinois, Inc.
303 East Wacker
Concourse Level
Chicago, IL 60601
carol.pomponio@xo.com

Paul J. Rebey
Focal Communications Corporation
200 North LaSalle, Suite 800
Chicago, IL 60601
prebey@focal.com

Pamela H. Sherwood
Time Warner Telecom of Ohio, LP
4625 West 86th Street, #500
Indianapolis, IN 46268
pamela.sherwood@twtelecom.com

Darrell S. Townsley
WorldCom
205 North Michigan, 11th Floor
Chicago, IL 60601
darrell.townsley@wcom.com

David Chorzempa
AT&T Communications of Illinois
222 West Adams Street, Suite 1500
Chicago, IL 60606
dchorzempa@att.com

Richard M. Waris
Pretzel & Stouffer
One South Wacker, Suite 2500
Chicago, IL 60606
rwaris@pretzel-stouffer.com

Marilyn H. Ash
Mpower Communications Corp.
175 Sully's Trail, Suite 300
Pittsford, NY 14534
mash@mpowercom.com

Sally Briar
AT&T Communications of Illinois
AT&T Communications of Illinois
222 West Adams Street, Suite 1500
Chicago, IL 60606
sbriar@att.com

Frances Brown
AT&T Communications of Illinois
215 S. Washington Sq., Suite 230
Lansing, MI 48933
francesbrown@att.com

STATE OF ILLINOIS)
)
COUNTY OF COOK)

SS

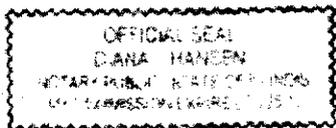
VERIFICATION

- I, James D. Ehr, state that I am the Director of Performance Measures of Illinois Bell Telephone Company ("AT&T Illinois"), that I have read the above foregoing **AT&T Illinois' Verified Prehearing Memorandum** and know the contents thereof, and that the factual statements in Section III of the "Discussion" therein are true to the best of my knowledge, information and belief.


James D. Ehr

Subscribed and sworn to before
me this 26th day of January 2006.


Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

VERIFICATION

I, James D. Ehr, state that I am the Director of Performance Measures for Illinois Bell Telephone Company ("AT&T Illinois"), that I have read the above foregoing AT&T Illinois' Verified Prehearing Memorandum and know the contents thereof, and that the factual statements in Section III of the "Discussion" therein are true to the best of my knowledge, information and belief.


James D. Ehr

Subscribed and sworn to before
me this 20th day of January 2006.


Notary Public

