STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In the Matter of the	**)**	
	)	
Proposed Revision to the Collocation	**)**	
Tariffs to Eliminate Charges for DC	**)**	**ICC Docket No. 05-0675**
Power on a Per Kilowatt-hour Basis	**)**	
and to Implement Charging on a Per	**)**	
Amp Basis	**)**	

REPLY BRIEF OF THE STAFF OF THE ILLLINOIS COMMERCE COMMISSION

Michael J. Lannon
Brandy D.B. Brown
Illinois Commerce Commission
Office of General Counsel
160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601
312 / 793-2877

May 12, 2006

Counsel for the Staff of the
Illinois Commerce Commission

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In the Matter of the	)	
	)	
Proposed Revision to the Collocation	)	
Tariffs to Eliminate Charges for DC	)	**ICC Docket No. 05-0675**
Power on a Per Kilowatt-hour Basis	)	
and to Implement Charging on a Per	)	
Amp Basis	)	

INITIAL BRIEF OF THE STAFF
OF THE ILLLINOIS COMMERCE COMMISSION

The Staff of the Illinois Commerce Commission ("the Staff"), by and through its counsel, and pursuant to Section 200.800 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the above-captioned matter.

I. Introduction

Much of what the parties argued in their Initial Briefs reflected their various respective positions as testified to in pre-filed testimony and at the evidentiary hearing. Staff, accordingly, in an effort to avoid rehashing what Staff has already argued in its Initial Brief, 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 arguments in its Initial Brief in this proceeding as though fully set forth herein. Accordingly, where Staff does not respond specifically to an assertion made by another party in this Reply 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. Proposed Hand-Held Metering Methods

In its Initial Brief, Staff noted that "[t]here are essentially two hand-held metering proposals offered to the Commission" (Staff IB, at 13); Staff's proposed collaborative effort using hand-held meters and AT&T's proposed "Collocator-Specified Amperage Load" method using hand-held meters. *Id*. Although Staff recommended both its own "collaborative" hand-held proposal[1] and the general hand-held methodology utilized by AT&T's "Collocator-Specified Amperage Load", Staff did not address any of the specific "mechanics"[2] of AT&T's proposal, other than opposing the 5-amp minimum. Staff IB, at 16-18. Staff continues to generally recommend a hand-held metering method to measure power usage. However, there is now a new hand-held metering proposal to be considered.

Although Joint CLEC witness Mr. Turner generally supported Staff's collaborative proposal as a "useful" or "acceptable" option,[3] the Joint CLECs did not propose a specific hand-held metering proposal of their own until their Initial Brief. *See* Joint CLEC IB, at 19 – 23. The Joint CLECs now propose, as a

---

[1] Staff, thus, disagrees with AT&T's statement that "[t]he only viable solution before the Commission is the AT&T Illinois 'per amp' proposal." AT&T IB, at 2. See also discussion below addressing the Joint CLECs' hand-held metering proposal.

[2] See AT&T IB, at 2 ("[T]his case has effectively come down to the question of whether the mechanics for the 'per amp' process set forth in RAS-14 are appropriate.").

[3] *See* Joint CLEC Ex. 2.1 (Turner), at 34 ("In short, I agree with Ms. Stewart that a collaborative may be a useful component of reaching a final solution, but only if the collaborative has a narrow scope defined by the Commission's order and with a definitive timeframe in which the collaboration must be completed."); *see also* Joint CLEC 2.2 (Turner), at 12 ("CLECs would also find it acceptable for AT&T Illinois to take periodic usage readings using hand-held meters . . . for the purpose of determining the amount that each CLEC should be billed for power consumption.").

"secondary" recommendation, "that the Commission direct AT&T to use hand-held metering units to measure CLECs' collocation power usage and to use those measurements to bill the CLECs for collocation power." Joint CLECs IB, at 20. The Joint CLECs emphasize, however, that "AT&T would remain responsible for taking the periodic power usage readings at the CLECs' collocation sites." Joint CLEC IB, at 21. Thus, under the Joint CLECs hand-held metering proposal, and in contrast to AT&T's, there would be "no 'self-certification' process and no audit or penalty procedures." *Id*. In support of their proposal and in opposition to AT&T's proposal, the Joint CLEC also underscore the point that they have already "paid AT&T (through significant non-recurring charges) for a functioning power measurement system that would enable AT&T to obtain accurate measurements of each CLEC's collocation power usage and to bill the CLEC for that usage." *Id*., at 22.

AT&T, anticipating the Joint CLEC's hand-held metering proposal, and in defense of its "self-certification hand-held metering proposal, objects to the Joint CLECs' proposal because it would "place[] all of the administrative burden and expense on AT&T Illinois, and does so without the ability to recover for the extra work of taking the measurements on behalf of the CLECs." AT&T IB, at 81. AT&T argues, moreover, that the Joint CLEC proposal "absolves them [Joint CLECs] from any responsibility for managing their own networks and for working cooperatively with AT&T Illinois to manage the vendor/customer relationship." *Id.*, at 80. In contrast to the Joint CLECs' hand-held metering proposal, AT&T

argues that its "proposal allocates the burdens and expense to both AT&T Illinois and CLECs. *Id.*, at 79.

The difference, accordingly, between the AT&T hand-held metering proposal and the Joint CLECs' proposal is who should shoulder the burden of taking the actual hand-held metering measurements and the associated additional costs that will be incurred, costs that are currently not incurred.[4] The current inaccurate return side metering was implemented by AT&T but paid for by CLECs through certain NRCs.[5] Under any of the proposed hand-held metering methods, someone (either AT&T or the CLECs) will incur the time and expense of taking the power measurements, whatever the ultimate cost may be, which is likely to be determined, at least in large part, by the number of times the DC power arrangements need to be measured.[6] Although Staff did not address any of the specific "mechanical" issues, Staff would note, however, that the hand-held collaborative method it proposed was intended to resolve these types of issues, albeit necessarily coupled with direction from the Commission.

---

[4] In making their argument that the CLECs should not shoulder the burden and cost of taking the physical measurements because, among other reasons, AT&T failed to mitigate its damages, the Joint CLECs characterize meetings between Staff and AT&T as "private" or "secret" meetings. Joint CLEC IB, at 3 ("private"), 32, n. 83 ("secret"). Staff objects to the Joint CLECs characterization of those meetings as either "secret" or "private," which may imply improper action on the part of AT&T or perhaps Staff at the expense of CLECs. Staff takes no position on the issue of whether AT&T should have consulted with CLECs before it did. Staff, however, points out that if a carrier notifies Staff that it has a problem and is contemplating tariff revisions, then it is only proper that Staff investigate such circumstances in order to offer the Commission an informed opinion as to whether the Commission should investigate the tariff revision, which is exactly what Staff has done in regard to the tariff revision at issue in this proceeding. Moreover, Staff points out that at least one of the Joint CLECs is perfectly well aware that Staff affirmatively sought out and brought into the process a CLEC. See Attachment A, Staff's response to McLeodUSA 1.8.

[5] AT&T IB, at 5 - 7; Joint CLECs IB, at 31 – 38.

[6] See Joint CLECs IB, at 42 – 43; AT&T IB, at 3-4, 47-49.

Consistent with its recommendation in its Initial Brief, Staff recommends the Joint CLECs' hand-held metering proposal in the same general sense that it recommends AT&T's "Collocator-Specified Amperage Load" proposal. The Joint CLECs' hand-held metering proposal, like Staff's and AT&T's proposals, benefit from all of the favorable characteristics of hand-held metering Staff outlined in its Initial Brief.[7] All three hand-held metering methods are safe, inexpensive, non-disruptive to install, and will accurately measure the power consumed. Staff IB, at 11-13. In the event that the Commission is unsure of the best resolution of any specific issue(s) between the competing AT&T proposal and the Joint CLEC proposal, Staff recommends the Commission adopt the "collaborative" approach wherein any lingering issues can be resolved.

III. AT&T's Proposed Minimum Amp Requirement[8]

AT&T points out that "[a]ll parties are also in agreement that whatever system replaces return-side power metering, it must be usage based." AT&T IB, at 1. AT&T also argues that "[b]ecause no party has challenged whether AT&T Illinois' proposal properly converts the approved kilowatt per hour cost to a per amp cost, it is axiomatic that AT&T Illinois' proposal will result in a 'net neutral effect' for AT&T Illinois and collocators, at least from a *cost* perspective." AT&T IB, at 32 (emphasis in original). AT&T, however, continues to insist that there should be a minimum charge of 5 amps upon every power delivery arrangement,

---

[7] Staff IB, at 11-14.

[8] AT&T is proposing a 5 amp minimum for each power delivery arrangement if the power is provided through the BDFB or 51 amps if the power is provided through the power board. Staff's comments both in this Reply Brief and in its Initial Brief on the 5 amp minimum also apply equally to the 51 amp minimum.

regardless of the level of usage. This is simply inconsistent[9] with this Commission's usage based directive in its Second Interim Order in ICC Docket Nos. 96-0486/0569. Staff IB, at 16-18.

In defense of the 5 amp minimum, AT&T for the first time in this proceeding sets forth a cost rationale in its brief, arguing that "it is merely recovering its fixed cost investment in the DC power plant infrastructure." AT&T IB, at 55. AT&T explains that:

> In order to ensure cost recovery for CLEC power delivery arrangements connected to AT&T's power plant which are unused or seriously under-utilized, AT&T Illinois proposes a 5 amp minimum for power delivery arrangements served from a Battery Distribution Fuse Bay ("BDFB"). This minimum is intended to assist AT&T Illinois in recovering the costs for the DC power infrastructure that are only recovered in the recurring monthly power charge. Without a 5 amp minimum, AT&T Illinois would be incurring costs to provide the CLEC with the capability to draw DC power without recovering those costs.
>
> AT&T IB, at 17.

Until its Initial Brief, AT&T, however, consistently argued in this proceeding that cost issues are not within the scope of this proceeding, and that this tariff filing is necessitated only by the defective nature of return side metering.[10] In fact, Staff witness Mr. Hanson had suggested that the types of cost recovery issues AT&T is now arguing "need to be addressed at some point." Staff Ex. 2.0

---

[9] This intrinsic inconsistency in AT&T's position is perhaps best exemplified by the following AT&T statement: "While there is some debate around the 5 amp minimum issue, there is no question that AT&T Illinois' proposal only bills CLECs for the DC power that they actually consume." AT&T IB, at 23. Staff agrees with the first half of this sentence in that there is a debate about the minimum amp requirement, a debate which centers on whether the minimum amp requirement is usage based, which, alone, belies the second part of the sentence that "there is no question" that AT&T's proposal is usage based.

[10] *See e.g.*, AT&T Ex. 3.0 (Parker), at 3-4 ("This change is necessary because the current methodology ('metering') cannot accurately measure the power consumed by CLECs and results in under-billing averaging approximately 30% to 40%.); AT&T Ex. 5.0 (Smith), at 6-7.

(Hanson), at 4-5. AT&T, however, summarily rejected Staff's suggestion.[11] Contrary to its rejection of Staff's suggestion that a cost study would be needed at some point in time, AT&T is now seeking a cost recovery rate design change, without any support from a cost study. Staff, accordingly, finds it inappropriate to raise a cost based argument at this stage of the proceedings when such arguments are not supported by a cost study, the record for such an argument has not been developed and cross examination of witnesses is no longer available.

A hypothetical example may best demonstrate the veiled change in rate design that AT&T is seeking. Assume that AT&T's existing tariff with a 28 cent per kWh power delivery charge is in place. Also assume the current return side metering worked perfectly and is accurate. Further assume that this perfectly functioning return side metering was installed in a collocation space in which the equipment was turned off. Accordingly, the turned off collocated equipment would have drawn zero kWhs in the hypothetical example. Thus, under the Commission's usage based directive, there should be a zero charge for that service.

If AT&T sought to revise its tariff in this proceeding simply to remedy a situation where the technology to implement the Commission's usage based mandate is flawed, then the hypothetical collocating CLEC described above should be assessed no charges because it has used no power. However, under AT&T Illinois' proposal, CLECs would be charged $49.00 per month, at $9.80 per

[11] *See* AT&T Ex. 2.1 (Vangel), at 6-7 ("AT&T Illinois is in the best position to determine when it should request a cost docket to review collocation cost.").

amp, per power delivery arrangement for this service. This scenario is not a mere attempt to adjust for a faulty technology -- it is also seeks to change the rate design ordered by the Commission for the service.

If AT&T disagrees with the Commission's reasoning in ordering usage based rates for power delivery services, it is free to make its case to Commission that the rate design should be changed. However, if it is going to make that case, it should be providing the Commission compelling economic rationale why that rate design should be changed. As is, AT&T has provided some vague unsupported statements on the part of Mr. Smith and Mr. Nevels on the necessity to recover fixed costs.[12] These may be rationale but they are neither economic nor compelling.

The 5 amp minimum charge is simply a rate increase for power delivery services. As Qwest points out, the $49.00 per month, at $9.80 per amp, per power delivery arrangement 5 amp minimum charge is the magnitude of the rate increase envisioned by AT&T Illinois, at least for dormant collocated equipment that draws no power. Qwest IB, at 3-4. If return side metering was 100% efficient, AT&T Illinois would not receive one cent of this revenue, which is precisely the outcome that should result from this proceeding.

[12] See AT&T IB, at 53-54.

IV. 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,

/s/_____

Michael J. Lannon
Brandy D.B. Brown
Illinois Commerce Commission
Office of General Counsel
160 North LaSalle Street
Suite C-800
Chicago, Illinois 60601
312 / 793-2877

May 12, 2006

Counsel for the Staff of the
Illinois Commerce Commission