

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

REPLY BRIEF OF AT&T ILLINOIS

PUBLIC VERSION

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TABLE OF CONTENTS

- I. INTRODUCTION.....1**
- II. NO ONE DISPUTES THAT RETURN-SIDE METERING IS A FAILURE3**
- III. AT&T ILLINOIS’ ‘PER AMP’ PROPOSAL IS THE MOST REASONALBE ALTERNATIVE TO RETURN-SIDE METERING.....3**
 - A. THE SELF-CERTIFICATION/AUDIT PROCESS IS CONSISTENT WITH THE *SECOND INTERIM ORDER*.....3**
 - B. CLEC CLAIMS OF HARM ARE BASELESS AND DO NOT PROVIDE ANY REASON TO TILT THE OUTCOME IN THEIR FAVOR7**
- IV. THE LANGUAGE DISPUTES SURROUNDING THE ‘PER AMP’ PROPOSAL SHOULD BE RESOLVED IN FAVOR OF AT&T ILLINOIS13**
 - 1. Language Dispute 1: Should The Initial Self-Certification For *Existing* Arrangements Be Completed Within 180 Days Or 90 Days? 14**
 - 2. Language Dispute 2: Should The Initial Self-Certification For *New* Arrangements Be Completed Within 90 Days Or 30 Days?15**
 - 3. Language Dispute 3: Should The CLEC Self-Certification Be Based On A Physical Site, Measured Verification?17**
 - 4. Language Dispute 4: Should CLECs Be Required To Self-Certify Once A Year Or Twice A Year?18**
 - 5. Language Dispute 5: Should AT&T Illinois Be Required To Offer A Service To CLECs In Which It Measures Usage At Power Delivery Arrangements?21**
 - 6. Language Dispute 6: Should The First Paragraph Of Paragraph 16A State That The Certification Will Contain A Statement Signed By A Responsible Officer Of The Collocator?21**
 - 7. Language Dispute 7: Should There Be A 5 Amp Minimum For Power Delivery Arrangements Served From The BDFB?24**
 - 8. Language Dispute 8: Should There Be A 51 Amp Minimum For Power Delivery Arrangements Fed From The Main Power Board? .27**
 - 9. Language Dispute 9: Should Applicable Charges Be Waived Under The ‘Power Fuse Reduction’ Feature Only When Fuse Sizes Are Decreased, Not Increased?28**
 - 10. Language Dispute 10: Should AT&T Illinois Be Limited To One (1) Audit Per Year?29**
 - 11. Language Dispute 11: Should AT&T Illinois Be Required To Provide CLEC With Notification Of The Audit Results For All Audits, Or Only For Those Audits That Actually Impact The CLEC?30**

12.	Language Dispute 12: Should AT&T Illinois Be Required To Cooperate With CLECs To Prepare A Standard Notification Form?	32
13.	Language Dispute 13: Should AT&T Illinois Be Required To Adjust A CLEC's Billing If The Audit Result Indicates That Actual Usage Is Less Than The Certified Amount?	32
14.	Language Dispute 14: Should The Collocator Represent And Warrant That, Under Normal Operating Conditions, It Will Not Draw More Than Its Collocator-Specified Amperage Load?	33
15.	Language Dispute 15: Should Joint CLEC-Proposed Language At The End Of Paragraph 21D Be Included?	33
V.	THE COMMISSION SHOULD REJECT THE CLEC PROPOSALS TO RETAIN POWER METERING IN ANY FORM.....	34
A.	SUPPLY-SIDE METERING WITH SHUNT BARS SHOULD NOT BE ADOPTED	36
B.	SPLIT-CORE TRANSDUCERS ARE ALSO NOT A VIABLE OPTION.....	39
C.	AT&T ILLINOIS SUPPORTS THE USE OF HAND-HELD METERING WHERE CONSISTENT WITH THE PROPOSED TERMS IN RAS-14	42
D.	THE COMMISSION SHOULD REJECT THE PROPOSAL TO USE SITE-SPECIFIC ADJUSTMENTS TO RETURN-SIDE METER READINGS.	44
E.	“DISPOSITION” OF THE NONRECURRING CHARGES THAT CLECS PAID FOR RETURN-SIDE METERING IS NOT AN ISSUE IN THIS CASE	46
VI.	MCLEODUSA CROSS EXHIBIT 1 WAS PROPERLY EXCLUDED FROM EVIDENCE	48
VII.	CONCLUSION	53

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REPLY BRIEF OF AT&T ILLINOIS

I. INTRODUCTION

This case has evolved into something much like an arbitration proceeding in which the parties acknowledge that they need written terms and conditions to govern a certain topic (here, charges for DC power), but cannot quite agree on what the language should say. Throughout this proceeding, AT&T Illinois and CLECs have expressly and implicitly acknowledged that return-side metering is irrevocably broken and that it is reasonable to replace it with a usage-based “per amp” charging system that relies on CLEC self-certification and ILEC audits. As in an arbitration, the parties exchanged language showing the agreed-upon items and highlighting the issues still in dispute. *See* Attachment SET-3 and Schedule RAS-14. And, as in an arbitration, AT&T Illinois identified each of the disputed items with a separate issue statement and has presented its argument why its position should be adopted. AT&T Ill. Br. at 40-70. Joint CLECs have done the same, although in a slightly different format. Jt. CLEC Br. at 45-49; 51-67. The parties have therefore presented the Commission with a comprehensive, distilled statement of the disputed issues and, as in an arbitration, the Commission can resolve this entire docket by deciding which of the competing versions of language shown in Schedule RAS-14

most reasonably resolve the business problems at hand. This is a road map for resolution of this docket. The Commission need not depart from the route plotted by the parties.

Joint CLECs have apparently developed last-minute doubts about the direction this docket is taking, because their Initial Brief is more shrill than anything that appeared in their three rounds of testimony.¹ The Joint CLECs' approach is confounding, to say the least. What should have been a straight-forward matter of developing a cooperative system for billing DC power has in the Joint CLEC Brief degenerated into bitter disagreements on seemingly inconsequential points. While they should have been looking for areas of agreement, Joint CLECs instead miss no opportunity to criticize AT&T Illinois, no matter how unfair the criticism or how pointless the argument. For example:

- Joint CLECs criticize AT&T Illinois for “shifting the administrative burden” to them by proposing a system of CLEC self-certification/ILEC audits. Jt. CLEC Br. at 40. In fact, it was Joint CLECs themselves that first proposed this approach in the Direct Testimony of Mr. Turner. Jt. CLEC Ex. 2.0 at 1361-1365. Mr. Turner made the same proposal in Michigan. Tr. at 299-300;
- Joint CLECs criticize AT&T Illinois for modifying its proposal so that it is “nothing more than a moving target”. Jt. CLEC Br. at 39. The movement denounced by CLECs is, of course, AT&T Illinois' efforts to moderate its position, elicit agreement and narrow the issues that the Commission must ultimately resolve;
- Joint CLECs criticize AT&T Illinois for introducing “minimum consumption charges” “in the later stages of this case”. Jt. CLEC Br. at 6. In fact, AT&T Illinois' *initial* proposal had a 10 amp minimum for power delivery arrangements served from the Battery Distribution Fuse Bay (“BDFB”). AT&T Ill. Ex. 5.0. Sch. RAS-2, Para. 17. Joint CLECs acknowledge this later in their Brief, (Jt. CLEC Br. at 46), so their criticism is even more pointless; and
- Joint CLECs say that AT&T Illinois intended in its Initial Testimony to charge on a “fused amp” basis, and that despite subsequent clarifications, AT&T Illinois cannot “keep its story straight”. Jt. CLEC Br. at 7, 39 and n. 42. In fact, as Staff correctly understood all along, AT&T Illinois initially proposed a “load amp” approach which would charge CLECs only for the amps they actually used. AT&T Ill. Ex. 5.0 at 11-13.

¹ Qwest's Initial Brief expresses no objection to a resolution along the lines proposed in Schedule RAS-14 and Attachment SET-3.

Any confusion over this point was clarified in the Rebuttal Testimony, so there is no reason for Joint CLECs to keep emphasizing their initial misunderstanding.

The reason for the Joint CLEC's overheated rhetoric is unclear. Perhaps it is intended to elicit sympathy for Joint CLECs; perhaps it is intended to cast AT&T Illinois in a bad light. Neither purpose would be legitimate or fair. This is a straight-forward commercial dispute regarding the fairly mundane issue of how best to construct an efficient, low cost, accurate system for DC power billing. The answer to this question lies not in the expensive, untested and infeasible methods proposed by Joint CLECs. Rather, it lies where AT&T Illinois and Joint CLECs have come the closest to resolution: the self-certification/audit provisions laid out in Schedule RAS-14 and Attachment SET-3. The Commission should not be diverted from this clear path for resolving this docket.

II. NO ONE DISPUTES THAT RETURN-SIDE METERING IS A FAILURE

No one proposes to retain the current return-side metering system. Joint CLECs, Staff and AT&T Illinois all agree that the return-side metering system does not work and that a new system must be adopted. Jt. CLEC Br. at 13; Staff Br. at 7; AT&T Ill. Br. at 5-16. Qwest says nothing to the contrary.

III. AT&T ILLINOIS' "PER AMP" PROPOSAL IS THE MOST REASONABLE ALTERNATIVE TO RETURN-SIDE METERING

A. THE SELF-CERTIFICATION/AUDIT PROCESS IS CONSISTENT WITH THE *SECOND INTERIM ORDER*

Joint CLECs argue that the *Second Interim Order*² immunizes them from any

² *Investigation Into Forward Looking Cost Studies and Rates of Ameritech Illinois for Interconnection, Network Elements, Transport and Termination of Traffic*, Docket No. 96-0486/96-0569, *Second Interim Order* dated February 17, 1998 ("*Second Interim Order*") at 98.

responsibility to measure DC power usage, (Jt. CLEC Br. at 6-8, 14), but nothing in that decision supports their position.

Joint CLECs initially argued that the *Second Interim Order* required AT&T Illinois to meter DC power. Jt. CLEC Ex. 2.0 at 421-422. Joint CLECs have dropped that argument and now read the *Second Interim Order* to require usage-based charges – not metering.³ But now Joint CLECs take a new slant and say that the *Second Interim Order* requires AT&T Illinois to be solely responsible for measuring DC power. Jt. CLEC Br. at 14. Not so. Nothing in the *Second Interim Order* discusses or describes how measurements are to take place or who is to take them. As we explain on pages 6 and 29 of our Initial Brief, the *Second Interim Order* only establishes a requirement for “usage-based” charges – nothing more. Joint CLECs point to no language in the *Second Interim Order* to support their contention. Even if they could, nothing prevents the Commission from using this proceeding to examine how measurements are to take place and who is to be responsible for them.

Joint CLECs also argue that AT&T Illinois’ proposal unfairly shifts to them the “primary responsibility” for determining DC power usage. Jt. CLEC Br. at 39-45. They offer five reasons to support this argument, but none of them hold water.

First, the Joint CLECs say that AT&T Illinois’ proposal shifts to them “all of the administrative and operational costs and burdens of measuring” DC power. Jt. CLEC Br. at 39.

This is wrong because:

1. CLECs neglect to mention that Mr. Turner - not AT&T Illinois - first proposed the self-certification/audit provisions. In Mr. Turner’s own words “...mechanisms could be created (such as audits, to which AT&T-Illinois’ testimony alludes) to address any concerns AT&T-Illinois may have about fraud or mis-sizing. Specifically, if AT&T Illinois were to audit the usage and find that the CLEC had reported its DC power Consumption inaccurately, there should be provisions within the tariff to penalize the CLECs for the under-reporting of DC power usage.” Jt. CLEC Ex. 2.0 at 1358-1364.

³ This is the position that Staff and AT&T Illinois have taken all along.

Joint CLECs can disagree with AT&T Illinois' specific proposals for self-certification and audits, but they are completely off-base when they argue that *any* self-certification requirement and *any* audit provision is unreasonable. Joint CLECs proposed these processes and cannot walk away from them now.

2. Joint CLECs look at only half of the equation. The expense of providing the self-certification falls upon the CLEC, but the expense of the audits falls completely on AT&T Illinois, except in fairly rare cases. AT&T Ill. Ex. 5.2 at 7.

3. AT&T Illinois can equally well argue that return-side power metering "shifted" the entire burden of power measurement onto it. Prior to return-side power metering, CLECs ordered a fuse size and paid for the entire capacity whether they used it or not. Return-side power metering placed all of the burden on AT&T Illinois to determine the amount of power that the CLECs were using and, as it turned out, resulted in a whopping under-recovery of \$25 million dollars. The precedent of placing the entire burden on AT&T Illinois has not been a successful one and should be rejected in favor of a system that requires the joint participation of both AT&T Illinois and CLECs.

Second, Joint CLECs argue that AT&T Illinois' proposal will shift to them the entire cost of conducting measurements. Jt. CLEC Br. at 39-40. Joint CLECs fail to recognize, however, that they will pay for the measurements, whether they take them themselves or whether the Commission requires AT&T Illinois to do it on their behalf. As AT&T Illinois established in its Initial Brief, the principles of cost causation require that any costs AT&T Illinois incurs on behalf of CLECs will be recoverable from those CLECs. AT&T Ill. Br. at 74, n. 24. Joint CLECs therefore have asked the wrong question. It is not "who will bear the cost?" (that will be the CLEC); rather, it is "who will take the measurement?" That should be the CLEC. Only the CLEC knows when its equipment changes and only the CLEC has the necessary access to its Collocation cage to take the measurements. AT&T Ill. Ex. 3.0, Sch. MN-6 at 16. There is also every reason to believe that AT&T Illinois' costs would be higher than a CLECs, so costs would actually *increase* if AT&T Illinois were required to perform the measurement. AT&T Ill. Br. at 51-52.

Third, Joint CLECs argue that because the self-certification/audit process was not part of AT&T Illinois' original tariff filing it should not be considered here. Jt. CLEC Br. at 40-41. This argument should be rejected out-of-hand. AT&T Illinois made the proposals in response to a suggestion made by Mr. Turner in his Direct Testimony. Even if that were not the case, there is no rule that prevents parties to a tariff proceeding from proposing modifications to the tariffs under investigation. Indeed, CLECs make a routine practice of this in virtually every tariff proceeding AT&T Illinois is familiar with.

Fourth, Joint CLECs argue that requiring them to take measurements would be the “functional equivalent” of granting a rate increase for more than the requested amount. Jt. CLEC Br. at 41. This is nonsensical because: 1) AT&T Illinois is not requesting a rate increase at all; 2) CLECs will incur the costs of measurements no matter who takes them; and 3) implementation costs are not a rate increase - they are a normal consequence of compliance with a Commission order. For example, when AT&T Illinois was required to establish Operation Support Systems (“OSS”) to allow CLECs to seamlessly place service orders and trouble reports, CLECs separately incurred the cost of building appropriate interfaces in their own networks so they could use the AT&T Illinois OSS. *See*, e.g., Docket 01-0511 (ICA approval docket for Mpower/AT&T Illinois), OSS Appendix, Section 3.11 (Mpower must obtain its own operating system hardware and software to access AT&T Illinois' OSS functions).

Fifth, Joint CLECs argue that AT&T Illinois' proposal would “create additional steps and processes and increase the total cost to all parties of measuring and billing”. Jt. CLEC Br. at 42-43. Again, Joint CLECs fail to recognize that costs will be incurred to take measurements, regardless of who takes them. The Joint CLEC proposal does not change the total amount of measurements required per year. If the Joint CLEC objection is to the AT&T Illinois proposal

that they take *two* measurements per year, that issue can be addressed within the scope of the AT&T Illinois “per amp” proposal in Language Dispute 4. It is not a reason to abandon the AT&T Illinois proposal altogether.

Similarly, a process to double check the party that performs the measurement will be needed regardless of who takes the measurement. If Joint CLECs take the measurement, AT&T Illinois needs the option to audit those measurements. If AT&T Illinois takes the measurement, Joint CLECs need the ability to double check those measurements. The cost of double-checking is not lessened under the Joint CLEC proposal. In fact, it will be higher because there will be more measurement disputes. Unlike the AT&T Illinois audit proposal, the Joint CLEC proposal has no “dead zone” of 1% to 9% (and at least a 5 amp differential), so if a CLEC receives a bill stating that its usage was 11 amps and it measures its usage (as it undoubtedly will do to double check) and determines that its usage was only 10 amps, it can bring a billing dispute. Under the AT&T Illinois proposal, that discrepancy would not result in any bill change because it does not meet the minimum threshold of at least 5 amps. Accordingly, it is the Joint CLEC proposal that will cause both parties to incur greater expense.

For all of these reason, the Commission should reject the Joint CLEC claim that the AT&T Illinois “per amp” proposal improperly or unfairly shifts measurement responsibilities.

B. CLEC CLAIMS OF HARM ARE BASELESS AND DO NOT PROVIDE ANY REASON TO TILT THE OUTCOME IN THEIR FAVOR

Another theme emerging from the Joint CLEC Brief is the impact of the \$1,500,000 in non-recurring charges (“NRCs”) paid by Joint CLECs and the \$25,000,000 loss sustained by AT&T Illinois. At one point in this proceeding, AT&T Illinois believed that these would not be major issues because the NRCs were vastly outweighed by AT&T Illinois’ unrecovered DC

power charges. Joint CLECs, however, are not content to let these issues go. To the contrary, they attempt the astounding feat of magnifying the harm they incurred and minimizing (in fact, eliminating altogether) the loss to AT&T Illinois. So complete is their topsy-turvy view of the world that Joint CLECs actually argue that they were *harmed* by receiving \$25,000,000 in free DC power over the past 7 years. Their game is an obvious one: they seek to impose the measurement obligations on AT&T Illinois (and to avoid any administrative obligations of their own) as indirect compensation for the NRCs they paid in the past. The “pay-off” is explained at pages 22-23, 31-38 and 44-45 of the Joint CLEC Initial Brief. There, they say that they will surrender their claim to a full refund of the NRCs if AT&T Illinois is required to take all the hand held power measurements for free. The Commission should not be taken in by this gambit. And, needless to say, AT&T Illinois is not willing to forego recovery of its \$25,000,000 given the Joint CLEC arguments.⁴

Joint CLECs begin this stratagem by arguing that AT&T Illinois should have known that the return-side power metering system was defective well before 2002. Jt. CLEC Br. at 8. Hindsight is 20-20, so it is easy for Joint CLECs to make this criticism. That does not change the fact, however, that AT&T Illinois did not realize that it had a problem until March of 2002. Had it known before then that it was losing roughly \$2,400,000 every year, it would have certainly brought the matter to the Commission’s attention sooner than it did. And it is worth noting that the Joint CLECs’ assertion in footnote 19 tells only part of the story. AT&T Illinois did test the accuracy of readings at the return shunts and at the PMUs prior to implementing return-side power metering, but what Joint CLECs fail to disclose is that this test would not detect any leakage. It merely tested whether the readings at the return-side shunt matched the

⁴ In light of the Joint CLEC arguments, nothing in this Reply Brief or in AT&T Illinois’ Initial Brief should be taken as a waiver or compromise of AT&T Illinois’ rights to recover for unbilled DC power.

readings at the PMU. Both of these components are on the “return” side of the equipment and therefore the leakage has already occurred before the power reaches them. AT&T Ill. Ex. 4.0, Sch. JM-1.

The next step in the process is to criticize AT&T Illinois for failing to take corrective action until 2005. Jt. CLEC Br. at 9-10. It is not clear what corrective action they have in mind because AT&T Illinois was (and is) obligated by its tariff to adhere to the return-side power metering system that it implemented. AT&T Illinois did, however, fully disclose the problem to Staff. AT&T Ill. Ex. 1.1 at 54-68. There was nothing improper with these contacts with Staff as Joint CLECs imply. Jt. CLEC Br. at 32, n. 83. To the contrary, it demonstrates a responsible working relationship between a regulated entity and the regulatory staff to make sure that the regulator is fully informed about industry issues. This conduct should be encouraged, not criticized.

Next, Joint CLECs criticize AT&T Illinois for continuing to collect NRCs after the problems with the return-side power metering were discovered. Jt. CLEC Br. at 12-13. Once again, however, AT&T Illinois was bound by its tariff to continue to collect the charges set forth in the tariff. And, in fact, AT&T Illinois provided the components (i.e., return-side shunts, wiring and PMUs) whose costs were recovered by the NRCs in question. Moreover, the components covered by the NRCs actually operated and the power readings were used to render bills to the CLECs, so the tariff services were provided. But the clincher is that the resulting bills were 30% to 50% lower than actual usage, so Joint CLECs paid for a measurement system that ultimately gave them roughly \$12,000,000 in financial benefit through unbilled DC power AT&T Ill. Ex. 5.1 at 23-24. It is as if a Commonwealth Edison customer pays the utility \$100 up-front, but in exchange gets a 50% discount on its normal monthly power bill of \$50. Over the

course of four months, the customer will entirely recoup his down payment and over the course of the year, the customer will be far ahead in the deal.

Of course, any refund is barred by the filed rate doctrine. *See* AT&T II. Br at 14, n.4. AT&T II. Reply Br. at Sec. V. The filed rate doctrine bars a direct or *indirect* refund. Joint CLECs themselves acknowledge that a refund is highly problematic, (Jt. CLEC Br. at 34), but go on to suggest that in lieu of a direct refund they should receive a ruling in this case which provides them with an indirect financial benefit. In particular, they suggest that they should receive a credit against future charges for power measurements performed by AT&T Illinois or that AT&T Illinois should perform the measurements, at no charge, in perpetuity. Any ruling that provides Joint CLECs with a financial benefit in recognition of the NRCs they have already paid would run afoul of the filed rate doctrine and should be rejected.

Finally, for Joint CLEC's gambit to work, they must convince the Commission that AT&T Illinois' \$25,000,000 loss should simply be ignored. This is an impossible task. Joint CLECs do not deny that the return-side power metering is plagued by leakage. Indeed, that is the very basis on which they agree that it no longer works. Jt. CLEC Br. at 13; Tr. at 237. The fact of leakage can only mean one thing: CLECs were not billed for DC power that they used and AT&T Illinois suffered a concomitant loss. Joint CLECs nowhere acknowledge this logical flaw in their argument. Instead, they blame AT&T Illinois and argue that it should have "mitigated" its losses. Jt. CLEC Br. at 11. But AT&T Illinois could not simply ignore its own tariff and begin billing CLECs under some new system that it unilaterally imposed upon them. The disputes in this proceeding are ample evidence of how well that would have been received by the CLEC community.

Joint CLECS next say that the \$25,000,000 figure cannot be believed because it is “speculative” and not based on “credible evidence”. Jt. CLEC Br. at 11, 32. The substantial losses suffered by AT&T Illinois are established by no less than three (3) separate sources: AT&T Illinois witness Larry Parker (who relied on measurements performed by AT&T Illinois power engineer Robert Lindsley); AT&T Illinois witness Jeanne Muellner (a power engineer who conducted extensive measurements of her own); and the evaluations of Telcordia Technologies (an independent expert that verified the existence of, and the extent of, leakage in AT&T Illinois’ central offices). AT&T Ill. Ex. 1.0 at 17; AT&T Ill. Ex. 4.0 at 11-15; and AT&T Ill. Ex. 3.0 at Sch. MN-6. Joint CLECs submitted no evidence of their own on the extent of leakage or the resulting losses to AT&T Illinois. Instead, they go to great length to demonstrate that Ms. Muellner did not take measurements at every CLEC collocation arrangement, but she did not need to do that. She documented that frame-ground leakage is actively occurring at 20 CLEC collocation arrangements in the Franklin central office and her readings paralleled those taken by Telcordia 2 years earlier, further corroborating the accuracy of Ms. Muellner’s analysis. AT&T Ill. Ex. 4.0, Sch. JM-2. She then analyzed the leakage that is occurring at twelve separate collocation arrangements in four different central offices (each collocation arrangement having two power leads) and calculated the range of leakage (0% to 90%) and the weighted-average leakage (47%). AT&T Ill. Ex. 4.0, Sch. JM-3; AT&T Il Br at 11-12. She further testified that AT&T Illinois’ frame ground configuration and return-side power metering architecture at these locations is the same at every other CLEC collocation in the AT&T Illinois network, so there is no reason that her results would change from office to office. Tr. at 429-430. Joint CLECs took no measurements of their own and cannot now pretend that leakage exists only at the 12 collocation arrangements she measured and nowhere else.

The final piece in the Joint CLEC house of cards is their incredible argument that the \$25,000,000 loss should be ignored because under-billing “is not the unmitigated blessing for CLECs that AT&T makes it out to be”. Jt. CLEC Br. at 12. According to Joint CLECs, they were actually harmed by the under-billing because they were lulled into investments and pricing decisions they would not otherwise have made. There are several problems with this argument. First, it is completely unsupported by any evidence in the record. Joint CLEC cannot point to a single investment that they would not have made but for the underbilling for DC power, nor can they point to a single price they set too low based upon underbilling of DC power. This is the worst type of post-hoc rationalization because it is a made-up fact that appears in the briefing stage and is not subject to cross-examination at all. The Joint CLEC assertions on page 12 of its Initial Brief should be stricken altogether; at the very least they should be ignored.

But even beyond the lack of evidence, the assertion is inherently incredible. Joint CLECs’ input pricing for DC power, and the way those charges were calculated, has not changed in 5 years, so they could not have been induced to set the price for their services “too low”. In any event, if their prices were too low, the CLECs had (and have) the power to raise them. It is also preposterous to assert that a 50% discount on DC power would be the determining factor driving CLEC investment in additional collocation arrangements. DC power charges are so small in comparison with the cost of telecommunications equipment, transmission facilities, the build-out fee, collocation space charges and personnel costs, that it defies logic to assert that CLECs established collocation arrangements they otherwise would not have established. In short, Joint CLECs cannot piece together a convincing story of why it was bad for them to be under-billed.

What, then, should the Commission make of the \$1,500,000 expenditure on NRCs and the \$25,000,000 in lost DC power revenue? It should ignore them both. Rather than focus on the past impacts of a failed return-side power metering system, it should focus on the adoption of a new system that can efficiently produce accurate measurements on a going-forward basis. As we explain here, and as we discuss further in Section V, the Commission should not refund the NRCs to Joint CLECs and it should not resolve any substantive issue in this case with a view of reimbursing CLECs for the NRCs directly or indirectly.

IV. THE LANGUAGE DISPUTES SURROUNDING THE “PER AMP” PROPOSAL SHOULD BE RESOLVED IN FAVOR OF AT&T ILLINOIS

Throughout this proceeding the Joint CLECs were working cooperatively to fashion a mutually-agreeable process for CLEC self-certifications and AT&T Illinois audits. Mr. Turner proposed these features in his Direct Testimony (Jt. CLEC Ex. 2.0 at 1360-1365); AT&T Illinois offered a proposal consistent with his recommendation (AT&T Ill. Ex. 5.1, Sch. RAS-4); Mr. Turner modified the AT&T Illinois language (Jt. CLEC Ex. 2.1, Attch. SET-3); and AT&T Illinois accepted many of his modifications. AT&T Ill. Ex. 5.2, Sch. RAS-14. Joint CLECs have changed their tune and now take a far more contentious tone in their Initial Brief. There, they back away from their proposals that CLECs certify the amount of power they use and that AT&T Illinois have the ability to audit those certifications. In the process, they disavow their own witness - who testified that it would be “prudent” for the CLECs to take actual measurements and acknowledged that AT&T Illinois should audit those certifications. Jt. CLEC Ex. 2.1 at 34-35; Tr. at 249.

It is unclear what has caused this reversal. Perhaps it is a litigation strategy to enhance their position on the disputed language in Schedule RAS-14. Perhaps Joint CLECs concluded

that AT&T Illinois' latest offer is a reasonable outcome so they can only do better (not worse) by litigating. Whatever their motivation, it is too late for them to change their position or to take back their own testimony; it is record evidence. According to their own witness, the "per amp" approach embodied in Schedule RAS-14 is an acceptable alternative. Mr. Turner "offered-up" the self-reporting option in Michigan (Tr. at 299-300) and was the first person in this proceeding to propose that CLECs be responsible to self-certify the amount of DC power usage and that AT&T Illinois be permitted to audit those self-certifications. Jt. CLEC Ex. 2.0 at 1360-1365. This was an acceptable alternative to Joint CLECs on February 2, 2006 when Mr. Turner filed his Direct Testimony and nothing has changed to make it any less acceptable today.

The Commission should not permit Joint CLECs to back away from this progress. The self-certification/audit structure is obviously acceptable to Joint CLECs (given the testimony of Mr. Turner). The Commission should adopt that approach to resolve this proceeding. Of course, the parties are not in total agreement on everything in Schedule RAS-14, but most language is undisputed and there are now less than 15 disputed issues for the Commission to resolve. Joint CLECs address all of these issues in Section IV of their Initial Brief. AT&T Illinois' response to these Joint CLEC positions is set forth below.

1. Language Dispute 1: Should The Initial Self-Certification For *Existing* Arrangements Be Completed Within 180 Days Or 90 Days?⁵

Section Reference: Paragraph 16A, First and Second Paragraphs

Joint CLECs claim that a 90 day period is "unreasonable" and "unworkable" because they do not have adequate staff. Jt. CLEC Br. at 54. As we explain in our Initial Brief, a 90 day period is reasonable. Even those CLECs with collocation arrangements in

⁵ Joint CLECs address Language Dispute 1 in Section IV.A.2.a.i on pages 54-55 of their Initial Brief.

as many as 120 central offices would need to do less than 2 offices per business day to comply with a 90 day transition period. AT&T Ill. Br. at 43. Given that it takes between 5 minutes (according to Joint CLECs) and 30 minutes (according to AT&T Illinois) to measure a power delivery arrangement, and given that travel time is reduced because those offices are clustered in metropolitan areas, the 90 day period is reasonable.

Joint CLECs fail to acknowledge that, in reality, they will have more than 90 days. The final order is due in this proceeding by August 12, 2006. In tariff review proceedings such as this, AT&T Illinois is typically required to file a compliance tariff within 14-21 days of the date of the Order.⁶ Thus, if the Order requires CLECs to take the initial measurement (and it should) they will be able to use this additional time to complete their measurements.

Joint CLECs also argue that the availability of the “true-up” makes this issue moot, (Jt. CLEC Br. at 55), but that is not true because AT&T Illinois’ billings during this “interim” period are 30%-50% less than they should be due to leakage. Thus, AT&T Illinois will continue to under-recover by 30%-50% and will never recoup the time value of money attributable to that leakage. Nor would it recover anything at all if a CLEC files for bankruptcy. AT&T Ill. Br. at 44.

2. Language Dispute 2: Should The Initial Self-Certification For New Arrangements Be Completed Within 90 Days Or 30 Days? ⁷

Section Reference: Paragraph 16A, First Paragraph

Joint CLECs offer two reasons why they should not be required to provide self-certifications for *new* DC power delivery within 30 days. Their position is based upon made-up

⁶ See, e.g., ICC Order in Docket 02-0864.

⁷ Joint CLECs address Language Dispute 2 in Section IV.A.2.a.iii. on page 57 of their Initial Brief.

facts and should be rejected. First, they argue that the “equipment may not reach its regular power draw” within 30 days. Jt. CLEC Br. at 57. There is no evidence in the record to support this assertion. Joint CLECs never asserted in their testimony that equipment is not installed all at once, or that equipment “ramps up” to a maximum power draw over the course of several days or weeks. Neither assertion is true and the Joint CLECs cannot (and do not) cite to anything in the record for support.

Second, Joint CLECs allege that a self-certification made within 30 days will not reflect actual power usage and will therefore subject it to audit penalty provisions. Jt. CLEC Br. at 57. Again, there is no evidence in the record to support the proposition that equipment does not reach its regular power draw for several days or weeks, so this argument must also be rejected. In fact, this astounding proposition is *contrary* to the record evidence. Joint CLECs asserted throughout this proceeding that telecommunications equipment, once activated, draws power at a relatively constant rate. Jt. CLEC Ex. 2.1 at 29. Joint CLECs cannot have it both ways.

Significantly, Joint CLECs do not assert that a “true-up” is available for any power use between the date of turnover and the date of the initial self-certification. This confirms AT&T Illinois’ assertion that the following language is required in Paragraph 16A to make it abundantly clear that the “true-up” applies to new, as well as existing collocation arrangements:

Upon submission of the Initial Certification Report for new power delivery arrangements, AT&T Illinois may retroactively bill the Initial Certification reported amperage from the date the affected collocation arrangement was turned over to Collocator. These retroactively billed amounts will be backbilled to Collocator within ninety (90) days from the date the Initial Certification is submitted to AT&T Illinois.

This language is required regardless of whether the initial certification period is 30 days or 90 days. AT&T Ill. Br. at 46.

3. Language Dispute 3: Should The CLEC Self-Certification Be Based On A Physical Site, Measured Verification? ⁸

Section Reference: Paragraph 16A, First and Second Paragraphs

Joint CLECs concede that it would be “prudent for a CLEC to make an initial site visit in order to measure power consumption”. Jt. CLEC Br. at 55. On cross-examination, Mr. Turner went further and agreed that if the goal were “purely accuracy” then he would recommend a physical site measurement. Tr. at 297. Staff agrees that the initial certification should be based on actual measurement, and that additional actual measurements are required with each equipment change. Tr. at 619-620 (Stewart).

Joint CLECs also argue, however, that “it is *possible* that a CLEC *could* have engineering records that identify power consumption”. Jt. CLEC Br. at 55 (emphasis added). Joint CLECs do not argue in favor of an engineering records-based certification: they merely hold it out as an option. But this option is a poor substitute for a physical site, measured verification because, by Covad’s own admission, it does not have adequate records to track equipment changes in its collocation arrangements. AT&T Ill. Br. at 47-48. There are also problems with the Joint CLECs’ assertion that an engineering records-based certification would “in most cases be greater” than power actually used. Jt. CLEC Br. at 56. This assertion could only be true if CLECs were required to base an engineering records certification on the List 1 Drain. Nothing in the Joint CLEC proposal imposes this requirement. Moreover, such a requirement would be unverifiable because AT&T Illinois does not know what equipment CLECs have in their collocation arrangements or what the manufacturer’s specifications say about the List 1 Drain of that equipment. In short, the CLEC proposal to use engineering records for self-certification is ill-defined and impractical.

⁸ Joint CLECs address Language Dispute 3 in Section IV.A.2.a.ii on page 55-56 of their Initial Brief.

Joint CLECs also argue that AT&T Illinois' proposal is "intended only to increase the CLECs' cost of collocation". Jt. CLEC Br. at 56. This type of baseless allegation is unfortunate in any proceeding, but it is particularly inappropriate here because the record shows that AT&T Illinois has offered constructive solutions to minimize the cost of a DC power measurement arrangement and has modified its proposal to accommodate concerns raised by CLECs. The Commission should disregard this accusation.

4. Language Dispute 4: Should CLECs Be Required To Self-Certify Once A Year Or Twice A Year? ⁹

Section Reference: Paragraph 16A, Second Paragraph

Joint CLECs criticize AT&T Illinois witness Smith for testifying that CLECs would typically visit their collocation arrangements at least twice a year. Jt. CLEC Br. at 60. This criticism is strange because Joint CLECs' own witness gave the same testimony:

"Q ...How often in a year would you expect a CLEC to be present at an active -
- actively operating collocation arrangement?"

A. I haven't had specific conversations with these companies, but it would -- I would anticipate that a CLEC would reasonably be expected to visit their site within that six-month period anyway.

Q. So do you -- you think at once every six months?

A. Yes."

Tr. at 252-253. Thus, there is no dispute that CLEC technicians will be on-site at least twice a year. This will permit them to take the actual readings that AT&T Illinois requests.

And, to make it more likely that CLECs will be able to take the actual measurements in the normal course of their business, AT&T Illinois is willing to accept any actual measurement performed within 90 days of a certification due date. So, for example, if a CLEC is required to

⁹ Joint CLECs address Language Dispute 4 in Section IV.A.2.a.v on page 59-63 of their Initial Brief.

provide a self-certification on January 1st and July 1st of each year,¹⁰ any actual reading taken during October, November or December of the previous year would qualify as an actual measurement for the self-certification due on January 1st. Similarly, any measurement taken during April, May or June would qualify for the self-certification due on July 1st. Thus, without even trying, at least 50% of the actual measurements can be taken at site visits which will already occur in the course of the CLEC's business. CLECs have the ability to schedule routine maintenance so that more site visits occur within the 90 days preceding a self-certification due date, further reducing their cost. CLECs will thus incur modest incremental costs for these measurements. The remaining measurements *might* require an actual dispatch, but the time to take the measurement is short (5 to 30 minutes) and the travel time between offices is minimized due to the "clustering" of these collocation arrangements in major metropolitan areas. AT&T Ill. Br. at 43. For these reasons, the cost to take actual measurements will not create the extreme burden Joint CLECs allege.

Joint CLECs propose that they be permitted to submit measurements taken "at any time during the specified time period (e.g., at any time during the calendar year)." Jt. CLEC Br. at 63. This proposal would frustrate the ability to obtain accurate measurements. For example, a February reading submitted in July would be too stale to produce an accurate measurement. In the five month interval between the measurement and the self-certification the CLEC could have changed its power usage by activating existing equipment or adding new equipment. Remember, under AT&T Illinois' proposal a CLEC is only required to update a certification, (other than the regularly required certifications), if its usage changes by more than 10 amps. *See* Schedule RAS-14, para. 16A. If the Commission modifies that proposal by allowing CLECs to take measurements at any time, a measurement taken in February would fix the billed amount for 11

¹⁰ AT&T Illinois acknowledges that a January 1 due date would create scheduling difficulties due to the holidays.

months, even though the CLEC's actual usage could have increased by as many as 9 amps. This is not a fair result.

Joint CLECs also argue that - after the initial self-certification - they should not be required to take another actual measurement unless equipment is "added or removed". *See* Jt. CLEC Init. Br. at 61-62. This approach should be rejected because it could allow CLECs to go years without submitting a self-certification based on an actual measurement. AT&T Ill. Br. at 49-50. If the Commission is going to consider such a lax approach (and it should not), then at the very least it must make sure that actual measurements are required anytime there has been a change in the CLEC's use of power. This is not limited to the situations when equipment is "added or removed". As AT&T Illinois explains in its Initial Brief, a CLEC's use of power will change when it activates existing equipment. AT&T Ill. Br. at 49. A simple example illustrates the point. Several CLECs in this proceeding contend that they have "dormant" collocation arrangements in which they have telecommunications equipment that is currently drawing no power. With the flip of a switch, that equipment can be activated and will begin drawing power *without the addition of any equipment*. Joint CLECs themselves acknowledge that the real standard is whether "there has been a change in the CLEC's use of power." Jt. CLEC Br. at 59. For these reasons, if the Commission is going to adopt this approach, at the very least it must ensure that a re-certification based on a physical site, measured verification must take place whenever the CLEC: 1) activates or de-activates any equipment bay(s) in an existing collocation arrangement; 2) activates or de-activates any equipment shelf in an existing activated equipment bay(s); or 3) activates or de-activates any card in an existing, activated equipment shelf. AT&T Ill. Br. at n. 19.

Putting all this aside, as an additional compromise to resolve Language Disputes 3 and 4, AT&T Illinois is willing to accept a system where each CLEC submits two certifications each year, the first being a physical site, measured verification and the second (the mid-year certification) being a certification based on a good-faith engineering estimate. The language that would operationalize this compromise position would be inserted in Paragraph 16A of Schedule RAS-14 and reads as follows:

In addition to the annual Certification, Collocator will submit to SBC Illinois a mid-year Certification which will be a signed Certification stating its total actual drain, in amperes, for each of its power delivery arrangements, including a statement signed by a responsible officer of the company, which attests that Collocator is not exceeding the total load of power as reported on the Certification. The mid-year Certification need not be based on a physical site, measured verification. Each mid-year Certification shall contain the measured total actual DC current drain in amperes which will be used by SBC Illinois to adjust billing on a per amperage basis, if different than the previous Certification. The mid-year certification shall be due 6 months after the annual certification.

If this compromise solution is not acceptable, then AT&T Illinois stands on its positions described above.

5. Language Dispute 5: Should AT&T Illinois Be Required To Offer A Service To CLECs In Which It Measures Usage At Power Delivery Arrangements?

Section Reference: None

AT&T Illinois addressed the issue in its Initial Brief out of an abundance of caution since it was mentioned in the Surrebuttal Testimony of Mr. Turner. Jt. CLEC Ex. 2.2 at 419-449. Joint CLECs did not address this issue in their Initial Brief and it was not included in the Joint CLEC language in Attachment SET-3. It therefore appears that this issue has been eliminated from the case.

6. Language Dispute 6: Should The First Paragraph Of Paragraph 16A State That The Certification Will Contain A

Statement Signed By A Responsible Officer Of The Collocator? ¹¹

Section Reference: Paragraph 16A, First Paragraph

In one of the stranger developments in this proceeding, Joint CLECs now object to language which they themselves proposed. In Mr. Turner's Rebuttal Testimony, he proposed that the initial certification report contain a statement "signed by a responsible officer of the company, which attests that Collocator is not exceeding the total load of power as reported on the Certification." Jt. CLEC Ex. 2.2, Attch. SET-3 (2nd paragraph of 16A). AT&T Illinois merely proposes to retain this language and to repeat it in the first paragraph of 16A to make it abundantly clear that the same certification requirement applies to new and existing power delivery arrangements. AT&T Ill. Br. at 52.

Joint CLECs nowhere acknowledge that they are opposing their own words. Instead, they argue that certification from an officer is not required to ensure accuracy, (Jt. CLEC Br. at 57-58), but AT&T Illinois' experience is that this requirement certainly helps. It is one thing for a low-level manager to make a certification to the best of his or her belief. A whole new level of focus is brought to bear when that manager requests a corporate officer to make the certification. As one might expect, the corporate officer will take great pains to make sure that the certification he or she is making is absolutely accurate.

And the Commission need not take AT&T Illinois' word for this; there are several situations in which AT&T Illinois and CLECs are required to provide a certification from a corporate officer. For example, in a 2004 interconnection agreement between AT&T Illinois and

¹¹ Joint CLECs address Language Dispute 6 in Section IV.A.2.a.iv on page 57-58 of their Initial Brief; Qwest Br. at 8.

Lees Communications, LLC approved by the Commission in Docket 04-0724, the parties agreed in the Directory Assistance Appendix as follows:

2.2.2 Upon termination of the Agreement, CLEC shall cease using, for any purpose whatsoever, the directory assistance listing information provided hereunder by SBC-13STATE, and shall extract and expunge all copies or any portions thereof from files and records and provide a certification from an officer of the company that all actions have been performed.

Verifications from corporate officers are also routinely required in Commission proceedings.

For example, in Talk America's application to amend its certificate to operate as a facilities-based carrier (Docket 02-0852), Order dated February 20, 2003 at 5, Talk America was required to submit, subject to a "verification statement from a corporate officer" a report regarding switching activities, customer offerings used in telemarketing sales scripts and consumer complaints. Under Section 730.115(b) of the Commission's Rules, Standards of Service for Local Exchange Telecommunications Carriers, carriers are required to submit a disaggregation report certified by an "authorized officer of the carrier". The same is true under Section 792.30(b), which requires the filing of imputation tests by carriers providing both competitive and non-competitive telecommunications services. Although AT&T Illinois should not be required to justify language which the Joint CLECs themselves propose, these citations establish the objective reasonableness of a requirement that a certification be made by a corporate officer. The requirement should be retained in this case.

7. Language Dispute 7: Should There Be A 5 Amp Minimum For Power Delivery Arrangements Served From The BDFB? ¹²

Section Reference: Paragraph 17

Joint CLECs, Qwest and Staff claim that AT&T Illinois' "per amp" proposal is not usage-based because of the 5 amp minimum feature. They are mistaken. AT&T Illinois' proposal is usage-based because it permits CLECs to specify the amount of power they use. It also ensures that AT&T Illinois adequately recovers its costs of providing DC power by incorporating the 5 amp minimum. Without the minimum, AT&T Illinois would not fully recover its fixed cost of providing the DC power infrastructure such as the main power board, the rectifier, the generators and the back-up batteries. AT&T Ill. 3.2 at 11-12; Tr. at 330 (Nevels). CLECs that are connected to AT&T Illinois' DC power infrastructure but use no power are like customers in a busy restaurant that reserve a table, causing the restaurant to set up for business by laying out the china, silverware, linen, bread and oil and having staff at the ready. The customers show up, but order nothing to eat or drink, so the restaurant not only loses potential revenue, its costs go unrecovered. Just as a restaurant depends on its customers that sit at its tables to spend money that enable the restaurant to cover its fixed costs, so too does AT&T Illinois depend upon CLECs to actually use DC power to help pay for the DC power plant. A billing mechanism can be usage-based while at the same time honoring the principle that an ILEC must be entitled to recover its fixed costs.

Joint CLECs rely on selective evidence to quantify the increase that the 5 amp minimum would allegeably cause. For example, Covad claims that it would increase its DC power expenditures by 13.73%. Jt. CLEC Br. at 48. Covad makes no account, however, for the rate

¹² Joint CLECs address Language Dispute 7 in Section III.B on pages 45-49 of their Initial Brief.

reduction caused by the use of the revised shared and common cause factor (yielding a 6% savings) or the reduction caused by the elimination of the monthly power measurement billing charge (a savings of \$11.49 per customer arrangement per month). AT&T Ill. Br. at 56. Nor does it account for the liberal audit provisions which effectively permit CLECs to use more power than they are charged for. Of course, these audit provisions are not designed to *guarantee* that every CLEC will get more power than it pays for. But neither does the 5 amp minimum *guarantee* that every CLEC will pay more for power than it actually uses.

And, there cannot be anything fundamentally wrong with the concept of a minimum amperage requirement because Verizon Illinois' tariff establishes a 10 amp minimum. AT&T Ill. Ex. 3.0, Sch. LGP-3 at 2. If a minimum amperage requirement were so fundamentally flawed, CLECs would have challenged the requirement in the Verizon tariff or, at the very least, the Commission would not have permitted such requirement to go into effect.

Qwest complains that a 5 amp minimum would have an inordinate impact on its operations, but that is undeniably due to the fact that Qwest, at the present moment, says that it has an extraordinary high number of "dormant" collocation arrangements. The Commission cannot reasonably expect this situation to last. Either Qwest will decide to actively begin using those collocation arrangements (in which case it will draw more than 5 amps per power delivery arrangements) or it will make the economically-rational decision to consolidate power delivery arrangements and terminate collocation arrangements. In either case, the 5 amp minimum will no longer be an issue. Qwest argued that it has no legal duty to consolidate its power arrangements, but by the same token AT&T Illinois has no legal duty to subsidize Qwest's power arrangements by foregoing adequate cost recovery. The solution, of course, is to permit AT&T Illinois to charge a reasonable minimum amperage amount and to allow Qwest to decide

whether it makes economic sense to retain the inordinately large power arrangements it currently has in place.

Finally, Qwest argues that AT&T Illinois' "per amp" proposal is not usage-based because its penalty provisions will cause CLECs to "over-certify" their actual usage in order to avoid penalties. Qwest Br. at 7. This argument makes no sense. It was the CLECs, not AT&T Illinois, that initially proposed the penalty as a component of a usage-based system. AT&T Ill. Br. at 18. If there were a chance that CLECs would inadvertently incur penalties, Joint CLECs would never have proposed them. Moreover, the AT&T Illinois audit plan already has substantial "buffers" built into it. As Qwest well knows, even if actual usage exceeds the specified usage by as much as 9%, the discrepancy is treated as *de minimus* and there are no consequences for the CLEC. AT&T Ill. Br. at 18. Discrepancies that are 10%-19% more than the specified amount (and at least 5 amps) are remedied *only* by retroactive billing of the proper amount and adjustment of the bill going forward - there is no "penalty" assessed. It is only when the discrepancy is 20% or more than the certified amount (and at least 5 amps) that AT&T Illinois can bill for anything other than the DC power provided. Accordingly, there is no need for CLECs to build a "buffer" into their self-certifications; AT&T Illinois already provides them a buffer of at least 19% -- possibly higher. Qwest submitted no evidence to show that this is not completely adequate to protect CLECs.

8. Language Dispute 8: Should There Be A 51 Amp Minimum For Power Delivery Arrangements Fed From The Main Power Board?¹³

Section Reference: Paragraphs 17 and 19

The 51 amp minimum requirement issue is substantially different from the 5 amp minimum because it does not require CLECs to use any given amount of power. Rather, it provides a financial motivation for CLECs with small power requirements to draw their power from a BDFB. The 51 amp minimum applies only to power delivery arrangements fed from the main power board. If a CLEC is not drawing at least 51 amps and is connected to the main power board, it can re-home its power delivery cables to the BDFB at a nominal charge and avoid the 51 amp minimum. AT&T Ill. Br. at 57.

The 51 amp minimum is apparently not an issue for Qwest at all because Qwest does not mention the issue in its Brief. Joint CLECs, for their part, have little to say about the issue, other than to assert that it can potentially increase costs. Jt. CLEC Br. at 48-49. They nowhere assert that any of their power delivery arrangements are actually fed directly from a main power board or that they would otherwise be impacted by the 51 amp minimum requirement. Had they made that assertion, however, it would have made little difference because the 51 amp minimum requirement can always be avoided by re-homing the power cable to a BDFB. Thus, the question is not whether it is fair to charge a minimum of 51 amps of power for arrangements served from the main power board. Rather, the question is whether it is fair to require CLECs to re-home their power cables to a BDFB in appropriate circumstances. AT&T Illinois has established that it is. First, the main power board is the first level of DC power distribution in a central office and the scarce ports at this location are more efficiently used to feed power arrangements that require large amount of power. AT&T Ill. Br. at 57. Second, the CLECs can

¹³ Joint CLECs address Language Dispute 8 in Section III.B on pages 45-49 of their Initial Brief.

re-home power delivery cables at a nominal charge of only \$350.50 for physical collocation arrangements and \$115.26 for virtual collocation arrangements. Third, there are few, if any, situations where this exists in Illinois. Tr. at 374-375 (Nevels).

9. Language Dispute 9: Should Applicable Charges Be Waived Under The “Power Fuse Reduction” Feature Only When Fuse Sizes Are Decreased, Not Increased? ¹⁴

Section Reference: Paragraphs 18 and 19

Joint CLECs disparage the “power fuse reduction” offer as “basically of little consequence”. Jt. CLEC Br. at 63. If CLECs are as indifferent to this proposal as that comment indicates, the Commission should approve it without further consideration. AT&T Illinois has demonstrated that the main purpose of the “power fuse reduction” offer is to help CLECs comply with Part 785.55(a)(i). There is, accordingly, a clear public interest reason for the “power fuse reduction” offer and it should be available if CLECs desire to use it.

Joint CLECs make a back-handed criticism of the intended one-year duration of the offer, *Id.*, but do not ask that it be made available for more than one year. Because there is no time limit contained within AT&T Illinois’ tariff proposal, the potential withdrawal of the “power fuse reduction” offer does not need to be considered here. It can be addressed if and when AT&T Illinois makes an appropriate tariff filing to withdraw it. In any event, it is doubtful that Staff would agree with the Joint CLEC assertion that they should have more than a year to reduce fuse sizes to comply with Part 785.55(a)(i). One year is an appropriate time frame for that purpose.

The real issue, therefore, is not the duration of the offer. Rather, it is whether Joint CLECs can use this issue as a way to get subsidized rates for *increasing* the fuse sizes. Joint

¹⁴ Joint CLECs address Language Dispute 9 in Section IV.A.2.c on pages 63-64 of their Initial Brief.

CLECs obviously see little benefit in reducing their fuse sizes. But, for CLECs that are growing, they see this as an opportunity to get something (i.e., upgraded fuse sizes and cable changes) for next to nothing (i.e., nominal service order charges). The likely instigator of this request is Covad, which indicated in response to AT&T Illinois Data Request 1.10 that its voice services in Illinois are growing as a result of a recent agreement with EarthLink for a “Covad-provided line powered voice services”. [BEGIN CONFIDENTIAL] *****

***** [END CONFIDENTIAL] AT&T Ill. Ex. 8.0.
Power augments are a sign that competitors are winning new business and are a good sign for competition in general. There is absolutely no rationale, however, for allowing these growing CLECs to increase their power capacity at subsidized rates. Rather, standard tariff charges should apply so that AT&T Illinois can recover its costs for performing the power augmentation work.¹⁵

10. Language Dispute 10: Should AT&T Illinois Be Limited To One (1) Audit Per Year? ¹⁶

Section Reference: Paragraph 21A

Joint CLECs say very little in support of their position that AT&T Illinois be limited to one (1) audit per year. The Joint CLECs only point is that multiple audits would impose an “administrative burden”. Jt. CLEC Br. at 65. Qwest says nothing at all. AT&T Illinois

¹⁵ Joint CLECs argue that there are “no terms, conditions, or rates for fuse changes” when they need to increase fuse sizes. This is wrong. In response to a Staff data request to AT&T Illinois, the company explained the tariff charges that would apply to increase the fuse size and (if necessary) the size of the cable. Joint CLECs received a copy of that data request response.

¹⁶ Joint CLECs address Language Dispute 10 in Section IV.B.1 on page 65 of their Initial Brief.

anticipated this argument and fully responded to it in its Initial Brief, (AT&T Ill. Br. at 61-62), and will not repeat those arguments here.¹⁷

11. Language Dispute 11: Should AT&T Illinois Be Required To Provide CLEC With Notification Of The Audit Results For All Audits, Or Only For Those Audits That Actually Impact The CLEC?¹⁸

Section Reference: Paragraph 21A

Joint CLECs present two reasons in support of their request that AT&T Illinois provide copies of *all* audit information (and not just the audit information that actually impacts a CLEC). Jt. CLEC Br. at 65-66. Neither reason has merit.

First, Joint CLECs invent testimony and mis-cite the record in support of their argument that AT&T Illinois will maintain some form of mechanized database with all of the desired information. They cite to the cross-examination of Mr. Nevels, Tr. 340-341, but Mr. Nevels never testified that AT&T Illinois would maintain an automated database. He merely said that someone from AT&T Illinois would perform the audit and record the information on a form and that another person from AT&T Illinois would take action, as appropriate. Tr. 340-341 (Nevels). This cannot be twisted into evidence that AT&T Illinois will automate the process so that it can provide the information with the push of a button.

AT&T Illinois demonstrated in its Initial Brief that it would incur costs and administrative burden to prepare and provide the information that Joint CLECs request. AT&T Ill. Br. at 63-64. Joint CLECs elsewhere propose that AT&T Illinois should be paid for taking

¹⁷ Joint CLECs disparage the entire concept of an audit and say that it is “caused by AT&T Illinois’ late breaking proposal to have CLECs measure their own power consumption”. Jt. CLEC Br. at 65. Joint CLECs continue to ignore the fact that they are the ones that initially proposed a process under which CLECs measure their own power consumption, subject to an audit by AT&T Illinois. AT&T Ill. Br. at 18. It is hypocritical of Joint CLECs to criticize AT&T Illinois for fleshing out the very proposals that Joint CLECs made in the first place.

¹⁸ Joint CLECs address Language Dispute 11 in Section IV.B.2 on pages 65-66 of their Initial Brief.

measurements. *See, e.g.,* Jt. CLEC Ex. 2.2 at 419-449. This is an admission by Joint CLECs that AT&T Illinois should not be required to provide this information for free. As discussed in AT&T Illinois Initial Brief at 63-64, it should not be required to provide the information at all.

Second, Joint CLECs offer unconvincing reasons why they should have access to the information. The purported reason for having the information is that it “would assist CLECs in determining whether there will be disputes regarding methods, differences in metering equipment, time of day or other elements that could possibly lead to discrepancies between results.” Jt. CLEC Br. at 66. This boils down to a claim that the information will help the CLECs verify the measurements taken by AT&T Illinois during an audit, but this verification can be accomplished with the audit information that AT&T Illinois already agrees to provide when an audit will have a real consequence to a CLEC. CLECs will obtain the type of information they seek when an AT&T Illinois audit detects actual usage 10% greater (and more than 5 amps) than the certified amount. As we discuss in Language Dispute 12, below, AT&T Illinois has already agreed to provide the level of detail Joint CLECs request *when the audit will result in some billing change to the CLEC*. This will be the appropriate time for CLECs to determine whether there are differences in measuring methodologies. Moreover, since AT&T Illinois has agreed to give CLECs a full 30 days to file disputes, and since the dispute resolution process provides additional time after that, CLECs will have every opportunity to verify the audit measurement. Finally, none of the purported uses of the notice information would justify an indefinite obligation to provide notice of all audits and would not justify the administrative burden and expense it would impose on AT&T Illinois.

12. Language Dispute 12: Should AT&T Illinois Be Required To Cooperate With CLECs To Prepare A Standard Notification Form?¹⁹

Section Reference: Paragraph 21A

As we explain in our Initial Brief at 64, AT&T Illinois agrees to provide in the audit report the level of detail requested by Joint CLECs: a) the date and time of the validation; b) the location of the collocation arrangement audited (by CLLI, fuse position and bay); c) the equipment used to perform the audit (by manufacturer and model); and d) the number of amps measured. The request of Joint CLECs that AT&T Illinois be obligated to “cooperate in developing a form to be used” (Jt. CLEC Br. at 66) is therefore pointless and Joint CLECs offer no reason why this obligation should be imposed. Their proposal should be rejected.

13. Language Dispute 13: Should AT&T Illinois Be Required To Adjust A CLEC’s Billing If The Audit Result Indicates That Actual Usage Is Less Than The Certified Amount?

Section Reference: Paragraphs 21B and 21C

Joint CLECs do not address the question of whether AT&T Illinois should be required to adjust a CLEC’s billing if the audit result indicates that actual usage is less than the certified amount. Accordingly, Joint CLECs have abandoned this proposal and the Commission need not address it further.

¹⁹ Joint CLECs address Language Dispute 12 in Section IV.B.2 on page 66 of their Initial Brief.

14. Language Dispute 14: Should The Collocator Represent And Warrant That, Under Normal Operating Conditions, It Will Not Draw More Than Its Collocator-Specified Amperage Load? ²⁰

Section Reference: Paragraph 17

AT&T Illinois and Joint CLECs are in agreement on this issue. There are two places in the revised tariff language set forth in Schedule RAS-14 where AT&T Illinois has agreed to incorporate the concept that the Collocator's self-certification applies to its operations "under normal operating conditions". The first place is in the first and second paragraphs of 16A, which will now read:

This Certification will also contain a statement by a responsible officer of the Collocator, which attests that, under normal operating conditions, Collocator is not exceeding the total load of power as reported on the Certification.²¹

The second place is Paragraph 17. That language will now read:

Under this provision the Collocator represents and warrants that, under normal operating conditions, it will not draw more than its Collocator-Specified Amperage Load on the DC power leads provided by AT&T Illinois for a power arrangement.

See AT&T Ill. Br. at 66-68 and Jt. CLEC Br. at 58-59, 63.

15. Language Dispute 15: Should Joint CLEC-Proposed Language At The End Of Paragraph 21D Be Included? ²²

Section Reference: Paragraph 21D

This dispute involves two concepts which Joint CLECs seek to incorporate into Paragraph 21D. It appears that the parties are in agreement on the first concept. The Joint

²⁰ Joint CLECs address Language Dispute 14 in Section IV.A.2.a.iv on pages 58-59 and Section IV.A.2.b on page 63 of their Initial Brief.

²¹ Joint CLECs continue to dispute the requirement that the certification be obtained from a corporate officer, as set forth in Language Dispute Issue 6.

²² Joint CLECs address Language Dispute 15 in Section IV.B.3 on page 67 and Section IV.A.2.b on page 63 of their Initial Brief.

CLECs did not address the second concept, so the Commission should rule in AT&T Illinois' favor on that issue.

First, the CLEC-proposed language would state that “if the dispute is resolved in favor of Collocator, Collocator will not be required to reimburse AT&T Illinois for its cost of the audit.” Joint CLECs now agree that this provision would only apply if a successful challenge brings the final figure below the 20% trigger. AT&T Illinois believes that no additional language is required to express this outcome because the audit language in Paragraph 21D only imposes costs upon a CLEC if its actual usage is 20% or more greater than the certified usage, and specifically provides for a dispute resolution process. Nonetheless, if the Commission believes that some language is required AT&T Illinois would not object to a sentence at the end of Paragraph 21D that says: “If, as a result of the dispute resolution process, an audit result that initially qualified for reimbursement is determined to fall below the reimbursement thresholds set forth above, Collocator will not be required to reimburse AT&T Illinois for its cost of the audit.” This should resolve this aspect of the dispute.

Second, the CLEC-proposed language would also require that any amounts paid be subject to true-up. Joint CLECs nowhere address this requirement in their Initial Brief and have apparently abandoned their position on this issue. Accordingly, the Commission should rule in favor of AT&T Illinois.

V. THE COMMISSION SHOULD REJECT THE CLEC PROPOSALS TO RETAIN POWER METERING IN ANY FORM

Joint CLECs assert that “[T]here are other methods that can be employed by AT&T to measure and bill CLECs for power actually used, and to implement the Commission’s directive in the Illinois 1998 Order.” Jt. CLEC Br. at 14. By this Joint CLECs refer to the use of supply-

side shunts, split-core transducers, or hand held measuring devices. The problem with this assertion is that it remains only that: an assertion. No party, other than AT&T Illinois, has provided (via an evidentiary submission) a detailed description and justification for an alternative to the present return-side metering approach. Joint CLECs have failed to provide any information regarding the costs to install, maintain and operate their suggested alternatives. They have also failed to rebut the numerous implementation, cost and safety issues raised by AT&T Illinois.

Instead, Joint CLECs infuse their arguments with generalities. For example, regarding the use of shunts on supply-side power feeds, the Joint CLECs claim: “All of the concerns raised by AT&T regarding safety are present with the system that AT&T elected to use in the first place.” Jt. CLEC Br. at 17 (footnote omitted). This statement is easily shown to be false (see below). But what is troubling about this declaration is that it reveals that Joint CLECs have made fundamentally erroneous assumptions about design of central office power supply arrangements. It should be a simple matter for Joint CLECs to understand that the electrical and design properties of the return-side power feeds are markedly different from those of the supply-side power feeds. For one thing, supply-side power is delivered on multiple power leads while return-side feeds are generally aggregated into a single cable return. AT&T Illinois Ex. 3.0 at 7-8. This difference alone drives enormous variances in the costs to measure power on the supply side, (because many more leads must be physically monitored) and in the safety considerations. The Joint CLECs either fail to comprehend such basic design difference or they gloss over them via oversimplification.

In its opening brief, AT&T Illinois criticized the Joint CLECs for failing to make any truly affirmative alternative proposals. AT&T Illinois Br. at 70. Indeed, Joint CLEC witness

Mr. Turner’s testimony made it abundantly clear that he would not be tied to any particular approach: “I do not recommend that the Commission order AT&T to adopt any particular engineered metering architecture. How AT&T-Illinois chooses to implement metering is its choice....” Jt. CLEC Ex. 2.0 at 718-720. In their Initial Brief, the Joint CLECs continue this approach and never identify a primary alternative proposal.

Rather, the number of alternative approaches proffered by the Joint CLECs continues to multiply. They continue to argue AT&T Illinois could have deployed shunt bars on the supply-side rather than the return-side power leads. They complain that AT&T Illinois should have used split-core transducers. They posit that hand-held metering would be an acceptable approach if AT&T Illinois agreed to shoulder entirely all the all the work and responsibility. And Joint CLECs now proffer as “a last resort” that AT&T Illinois might try adopting a mechanism for adjusting return-side metering results to account for leakage. In other words, rather than come up with a single, clearly defined approach, Joint CLECs offer “should haves,” “could haves,” “would haves” and “last resort” proposals. None of the alternatives proposed, however, is a better choice than AT&T Illinois’ “per amp” proposal.

A. SUPPLY-SIDE METERING WITH SHUNT BARS SHOULD NOT BE ADOPTED

AT&T Illinois established in its testimony and in its Initial Brief that supply-side metering using shunt bars is not a viable alternative for a number of important reasons. Supply-side metering using shunts presents unacceptable operational and safety risks, particularly the possibility of electrical shorts or the chance that technicians will accidentally contact the exposed metal shunt plate. AT&T Ill. Br. at 70-71; AT&T Ill. Ex. 3.0 at 14-15. Joint CLECs claim that AT&T Illinois employed shunts on the return-side and, thus, “determined that placing them in

the DC Power Delivery circuit was sufficiently safe, efficient, and reliable as a means to comply with the Commission's prior orders." Jt. CLEC Br. at 17. But this does not mean that AT&T Illinois also concluded that supply-side shunts are safe, efficient, and reliable – indeed, AT&T Illinois' witnesses came to exactly the opposite conclusion. Joint CLECs ignore the fact that the power leads *supplying power* to a collocation power arrangement have different electrical characteristics to the power leads that operate to *return power* to the central office power grid.

AT&T Illinois' witnesses identified several critical differences between supply-side versus return-side power leads, each one of which substantially undermines the Joint CLEC's claim that supply-side shunts have the same operational and safety profile as return-side shunts. For example, supply-side power leads carry more power than return-side shunts, which means an electrical short is more likely and the risk of serious electrical shock to personnel is greater on the supply-side shunt. AT&T Ill. Ex. 3.1 at 7. Return-side shunts are close to the ground potential of the central office while supply-side shunts are not. *Id.* These are not trivial differences that can be ignored without peril – supply-side power leads operate and perform functions that are materially different from return-side power leads. But Joint CLECs lump these facilities together and incorrectly assume that if shunts were deemed practical for the return-side they must also be viable for the supply side.

Joint CLECs biggest mistake is that they fail to take into account the fact that, as compared to return-side power leads, there are many more supply-side power leads – and therefore, many more shunts – required to supply power to a collocation arrangement. In fact, the Joint CLEC fail to even attempt to dispute the claim made by AT&T Illinois that typically there are 7 to 10 more supply-side leads for each return-side lead because up to 10 return-side

power cables can be aggregated at a single shunt. AT&T Ill. Ex. 4.0 at 16-17.²³ AT&T Illinois' estimate that up to 15,000 shunts would be needed to implement supply-side metering is unrebutted by the Joint CLECs. Having failed to dispute these key facts, Joint CLECs never explain how the increased costs and complexity associated with installing 15,000 supply-side shunts is justified.

Joint CLECs argue that some shunts are available with casings that cover the shunt (and may be locked) that would prevent inadvertent contact, which presumably would lessen the risk of short circuits or technician contact. This assertion again displays the Joint CLECs' failure to understand the practicalities involved with engineering power systems. While casings may reduce inadvertent contact, they do not eliminate the need to expose the shunt during installation and maintenance or repair. Anytime a shunt is worked on by a technician, the casing must be opened and the risk of network failure (via shorts) or injury is exposed. *See* AT&T Ill. Ex. 3.1 at 7-8. Thus, locked shunt casing do not eliminate the risks involved with supply-side shunt. Rather, shunts with locked casings – in this case, 15,000 shunts with locked casings – increases tremendously the overall complexity and administration of power supply.

Staff, on the other hand, appropriately recognizes the complexity and impracticality of engineering 15,000 supply-side shunts and concludes that supply-side metering “would be significantly more dangerous than return-side metering or hand-held metering.” Staff Br. at 10.²⁴ Therefore, Staff finds that supply-side metering “is not sufficiently safe for Staff to recommend it.” *Id.* AT&T Illinois concurs and recommends that the Joint CLECs' proposal for supply-side metering be rejected.

²³ Mr. Nevels notes in his testimony at the cited pages that Mr. Turner agreed that there were as many as 7 supply-side leads while Mr. Nevels observed that the number could be as high as 10.

²⁴ Qwest's brief is silent on this issue and does not join the Joint CLEC discussion of supply-side metering as an alternative proposal.

B. SPLIT-CORE TRANSDUCERS ARE ALSO NOT A VIABLE OPTION.

Joint CLECs state that “[a]nother alternative available to AT&T” would be to use split-core transducers.²⁵ As AT&T Illinois explained in its opening brief, the ability of the Commission to consider the use of split-core transducers is severely limited by the fact that the Joint CLECs provided very little information regarding these devices’ operational characteristics, precision or cost. *See* AT&T Illinois Br. at 74-78.

In their Initial Brief, Joint CLECs set about to solve the dilemma of no evidence by supplying non-record information that purports to support their position.²⁶ The Joint CLECs claim that split-core transducers “would be attached to monitors in different parts of the central office” and “are capable of measuring and storing power usage on up to 32 sets of power feeds per card within the central office, with a capacity of four cards in some instances.” *Jt. CLEC Br.* at 18. The problem with these statements is that they are wholly unsupported by any record testimony or exhibits. Joint CLECs certainly have provided no citations to the record in support of these claims.²⁷ The information that is in the record establishes that the installation of split-core transducers would require an extraordinary level of work activity within AT&T Illinois central offices to place more than 15,000 split-core transducer units *plus* the “monitors” that the Joint CLECs mention. *AT&T Ill. Ex. 3.1* at 13-15; *Tr.* at 355-56 (Nevels). This evidence

²⁵ Qwest’s brief is silent on the advisability of using split-core transducers and does not joint the Joint CLECs in making this proposal.

²⁶ Staff recognizes in their brief that the evidence regarding split-core transducers is inconclusive. *Staff Br.* at 14. Therefore, “[d]ue to the unproven nature of [split-core transducer] technology, Staff cannot recommend this option to the Commission.” *Id.* Staff also notes that if the Commission rejects Staff’s recommendation and adopts the split-core transducer proposal, then it “recommends that [the Commission] not order [split-core transducers] to be implemented throughout central offices in AT&T’s service territories, but rather first implement it as a ‘test’ in one central office.” *Id.* at 15. Staff’s cautionary statement is not an endorsement of this proposal, therefore, but instead reflects the strong apprehensions it has with any split-core transducer proposal.

²⁷ At footnote 48 of their Initial Brief, Joint CLECs cite to page 50 of Mr. Turner’s direct testimony (*Jt. CLEC Ex. 2.0* at 50), but the testimony found at this page does not discuss or relate to the installation and operation of split-core transducers.

completely refutes Joint CLECs' assertion that split-core transducer provide a simple, easily implemented solution.

Joint CLECs misstate the testimony of AT&T Illinois witnesses when they claim that any problems associated with split-core transducers are ameliorated by placing the transducer units on the drop cables that enter a collocation site. AT&T Illinois witness Mr. Nevels testified extensively regarding the potential for electromagnetic disturbances affecting split-core transducers and the likely need for repeated recalibration of the measuring units. In their Initial Brief, Joint CLECs make the following claim in response, citing to page 362 (Mr. Nevels's cross examination) of the hearing transcript in support: "The transducers can be installed on the drop cable that goes to each CLEC collocation space, reducing any adverse effect relating to magnetic forces." This statement *is not* supported by testimony of Mr. Nevels found at this citation.

While Mr. Nevels agreed that split-core transducers might be placed on a drop cable that enters a collocation cage, in the same breath (and on the very next page of transcript) he noted that this would *not* solve the issue of electromagnetic disturbance:

A. ...So if you – we're talking about a drop cable, that cable drops down and we place a split-core transducer on it. Then if we place a split-core transducer on another cable very close to that one, then you have that magnetic disturbance problem.

Q. But if it's – if the split-core transducer is placed on a drop cable in such a way – or in such a place near the collocation space of the CLEC, that would not be near another drop cable, then you could put a split-core transducer in such a way that it would not be – that where the magnetic field would not affect the measuring capability of the transducer; correct?

A. Basically, we're talking about a drop cable and in a power delivery arrangement, we would have two, an A lead to a B lead, correct. We have to place a split-core transducer on both of those leads. They'd have to be calibrated for each other.

If a CLEC in that arrangement that we're dropping these cables to, they change equipment, that could affect that split-core transducer and change the readings of both of those.

Q. Okay. But without affecting other CLEC collocation in other areas?

A. I really can't say if it would not affect that because we don't have any information beyond what we've produced in split-core transducers.

Tr. at 363-364.

Ultimately, the testimony Joint CLECs claim supports them in reality undercuts their position. Other testimony by AT&T Illinois' witnesses also undermines the Joint CLEC argument that split-core transducers are a simpler, more practical approach because they do not require the splicing activity associated with shunts. Mr. Nevels testified in response to the Administrative Law Judge's questions that because power cables are sewn together, "for us to go in and place the [split-core] transducer, we'd have to break – get into that cable and unsew it and that's very difficult and problematic." Tr. at 355. Similarly, Joint CLECs' claim that split-core transducers "have an advantage over reinstalling PMUs on the supply side" because split-core transducers do not require splicing in the same manner as shunts. Jt. CLEC Br. at 19. But this point ignores the other problems that have been identified as specific to split-core transducers, such as the fact that split-core transducers require their own separate (and non-standard) 24 volt power supply. AT&T Ill. Ex. 3.1 at 15; Tr. at 377-78.

In sum, Joint CLECs have provided no support for their claims that split-core transducers are a simple, practical solution. This alternative should not be approved by the Commission.

C. AT&T ILLINOIS SUPPORTS THE USE OF HAND-HELD METERING WHERE CONSISTENT WITH THE PROPOSED TERMS IN RAS-14

Joint CLECs agree with AT&T Illinois that hand-held meters provide a simple and accurate means for measuring the power used by collocating carriers. Jt. CLECs Br. at 19-22. Joint CLECs argue, however, that AT&T Illinois should shoulder the CLECs' responsibility for measuring and managing their DC power use. The Joint CLEC position should be rejected. As we explain in Section III.A, *supra*, there is no overall cost savings or operational simplification if AT&T Illinois takes all of the measurements. The same measurements have to be taken, and the same verifications will be made by the other party, so there is no net reduction in work. Nor would Joint CLECs enjoy any cost-savings because AT&T Illinois will obviously charge them for whatever measurements it is required to take. *See* Section III.A, *supra*. Also, as we explain at page 80 of our Initial Brief, the Joint CLEC proposal has built-in inaccuracy because AT&T Illinois will not know when a CLEC activates or deactivates equipment, and will therefore bill for an incorrect amount of power until the next measurement takes place.

The proposal also overlooks the critical fact that AT&T Illinois does not have the access to the CLEC collocation cages needed to take the measurements. The problem is explained at page 16 of the Telcordia report.

In the majority of cases power measurements could not be conducted on collocator equipment. The reason is that collocator's equipment is contained within locked equipment cages. These equipment cages can only be unlocked by the collocator's personnel, who were not in attendance at the time of testing.

AT&T Ill. Ex. 3.0 at Sch. MN-6. Joint CLECs do not even acknowledge this problem, let alone offer a potential solution. Any solution would, of course, add further to the cost and operational complexity of their proposal.

Finally, Joint CLECs offer no operational details with their proposal, so it is impossible to know how it would actually work. For example, there is no indication of how often the “periodic power usage readings” should be taken by AT&T Illinois. Jt. CLEC Br. at 21. CLECs would pay for those measurements. Would they be taken once a year, twice a year, four times a year? The record says nothing on this point. AT&T Illinois does not know when a CLEC changes its usage by activating collocation equipment, so unless measurements are taken immediately thereafter, the billing will be incorrect. The Joint CLEC proposal does nothing to address this issue. Nor does it say anything about potential dispute resolution processes if a CLEC disputes an AT&T Illinois power reading. Should CLEC have an indefinite time to bring a dispute, or, as is the case with AT&T Illinois’ proposal, should any disputes be brought within a fixed period of time? As these questions show, the Joint CLEC proposal is cobbled together as an after-thought and does not reach the level of a workable, operational proposal. In contrast, AT&T Illinois’ “per amp” proposal has been fleshed out in intricate detail and has been thoroughly debated by Joint CLECs and AT&T Illinois.

Staff’s Brief does not support the Joint CLECs’ proposal to have AT&T Illinois monitor CLEC power using hand-held meters. Staff does outline and recommend two other proposals that would employ hand-held metering. Staff Br. at 13-14. One option is AT&T Illinois’ proposal whereby CLECs measure their power requirements, which obviously is acceptable to AT&T Illinois. The other option, originated by Staff, suggests a collaborative effort (between AT&T Illinois and a CLEC) to obtain readings on the supply-side power feed for each collocation power arrangements. Staff Br. at 13; Staff Ex. 1.0 at 17. AT&T Illinois witness Mr. Smith testified that this approach is also acceptable to AT&T Illinois.

D. THE COMMISSION SHOULD REJECT THE PROPOSAL TO USE SITE-SPECIFIC ADJUSTMENTS TO RETURN-SIDE METER READINGS.

As a “fourth best” or “last resort” option, Joint CLECs suggest that the Commission consider requiring AT&T Illinois to adjust the recorded kWh usage for a particular collocation site by a “factor intended to compensate for the ‘leakage’” not measured by AT&T Illinois current return-side power metering system. Jt. CLEC Br. at 23. There are several reasons why this proposal should be rejected.

As Joint CLECs admit, they did not even make this one of their proposals; they claim Qwest did. During the hearing, however, Qwest’s counsel disclaimed making this proposal. Tr. 618-19. And while Qwest witness Ms. Hunnicutt-Bishara did make a proposal in her direct testimony with regard to the adjustment of the *power rate* in order to offset leakage amounts not measured, Qwest did not mention this proposal in its Initial Brief, and, thus, should be considered to have waived it.

Staff also shows little interest in using an adjustment factor. Staff witness Hanson testified that Staff preferred that the parties develop a method to more accurately measure power usage rather than adjust the erroneous readings produced by return-side metering. Staff Ex. 2.1P at 2. This view is echoed in Staff’s Initial Brief, which cautions the Commission strongly against adopting a readjustment factor.²⁸ As no party is affirmatively sponsoring this approach, the Commission should not consider it further.

²⁸ Staff would consider a readjustment factor only if the factor can be “individually crafted to account, to the extent feasible, for each collocating CLEC’s actual power consumption is including leakage, which, as Staff notes (and all parties agree) varies from site to site and even from collocation cage to collocation cage. *See* Staff Br. at 7-8 (citing to Staff Ex. 1.0 (Stewart) at 10; AT&T II Ex. 4.0 (Muellner) at 15, AT&T III. Ex. 5.1 (Smith) at 29-30). It would make no sense, however, to craft a methodology that takes direct measurements of specific CLEC usage at site and then uses it to create a factor that offsets leakage when that same data could be used to establish actual power usage. AT&T Illinois’ proposal is based upon a CLEC’s actual measurement of power use, which is then used to establish the amount AT&T Illinois will bill. This approach is far preferable to using the same data to correct amounts erroneously measured by the return-side metering equipment now in use, and having two measurement systems rather than one.

Moreover, as Joint CLECs themselves point out, there is no consensus on what specific leakage factor should apply: “AT&T should not be allowed to apply a system-wide average adjustment factor for all CLEC collocations.” Jt. CLEC Br. at 31. AT&T Illinois agrees, has never made a proposal to use an average adjustment factor, and would strongly resist such an approach.

Last, it is clear that any attempt to establish site-specific leakage factors would be an enormously complex, wasteful, and ultimately unnecessary undertaking. Joint CLECs state that if the return-side power metering equipment is retained, “AT&T should be required to take measurements and determine a leakage factor for *each* CLEC collocation, and then apply the resulting collocation-specific adjustment factor to the recorded power usage at each CLEC collocation.” Jt. CLEC Br. at 31. However, no party has introduced evidence showing that this approach will produce more accurate results. There are any number of variables that would make such leakage adjustment factors unreliable. For example, the record in this case does not indicate whether leakage factors vary over time or with the addition or deletion of equipment from a collocation site (or from other sites on the power grid). Thus, even if AT&T Illinois was required to test each collocation site, there is no guarantee that the results of such tests would be valid even over the short run. The concept would also force AT&T Illinois to maintain the PMUs which, as we demonstrated in our Initial Brief, are unreliable and prone to failure. AT&T Ill. Br. at 14-15. It makes no sense, therefore, to require AT&T Illinois to perform the onerous task of establishing specific leakage factors at each of the hundreds of collocation sites in Illinois when AT&T Illinois’ simpler proposal will produce more accurate and far less controversial results.

E. “DISPOSITION” OF THE NONRECURRING CHARGES THAT CLECS PAID FOR RETURN-SIDE METERING IS NOT AN ISSUE IN THIS CASE

Over the course of seven intemperately-worded pages of their Initial Brief, Joint CLECs argue that if AT&T Illinois’ proposed per amp methodology is adopted by the Commission, AT&T Illinois should be required to refund the nonrecurring charges paid by CLECs for the current return-side metering equipment.²⁹ As a grounds for their contention, Joint CLECs variously claim that AT&T Illinois: (a) charged for metering equipment that it knew was producing inaccurate billing information;³⁰ (b) held secret meetings with the Commission staff in order to avoid disclosure of the problems associated with return-side metering;³¹ and (c) engaged in anticompetitive behavior that once “exposed” would violate consumer protection rules.³²

Only the first ground merits a response. As to the latter two contentions, they raise matters that are as insulting as they are irrelevant. It is unclear as to how AT&T Illinois is supposed to have held secret meetings with the staff of a public agency. AT&T Illinois has no power to bind the Staff to maintain the confidentiality of the discussions. No confidentiality agreements were executed. While it is true that AT&T Illinois did not invite the public to meetings, there was nothing secret about them and it is more than insulting to AT&T Illinois and to the Commission Staff for the Joint CLECs to paint such meetings as untoward. Obviously, meetings between the Commission Staff and carriers (including Joint CLECs) are commonplace.

As to the point regarding how AT&T Illinois’ conduct should be viewed from a consumer standpoint, the question arises: What exactly is the Joint CLECs’ point? Joint CLECs state, “one can only imagine the broad consumer outcry if AT&T had taken a similar tact [sic] with respect to a retail service – offering a service to consumers and charging them with a

²⁹ Qwest does not make a similar request in its brief.

³⁰ Jt. CLEC Br. at 34.

³¹ Jt. CLEC Br. at 32 & n. 83.

³² Jt. CLEC Br. at 35 & n. 87.

substantial up-front fee to install a service AT&T knew did not work properly at the time of installation.” Jt. CLEC Br. at 35 & n. 87. While the Joint CLECs’ overly-inflammatory language is improper, the point ignored by their assertion is that there is substantial evidence in the record showing that AT&T Illinois recognized that there was a problem with the return-side metering equipment, disclosed the problem to Commission staff and proposed alternatives - all in an attempt to formulate a new, more accurate measurement system. These are not the actions of an entity seeking to dupe its customers. This is particularly true given that during this time, there was no adverse impact to the CLECs because they were *undercharged* for the DC power they have used. One need not be an expert in consumer opinion to understand that customers that are systematically undercharged for service are not adversely impacted and almost never complain.

The heart (and ultimately, the fatal flaw) of the Joint CLECs’ argument is that it rests on a claim for a refund of amounts paid for a lawfully tariffed service. As Joint CLECs themselves admit, refunding amounts charged under a lawful tariff “raise some concerns...” Jt. CLEC Br. at 34. This is atypical understatement by the Joint CLECs. A lawfully filed rate must be charged by a carrier, even where the rate is the result of mistake or negligence. *Kansas City Southern Ry. Co. v. Carl*, 227 U.S. 649, 653, 33 S.Ct. 391, 395, 57 L. Ed. 683 (1913); *Keogh v. Chicago & Northwestern Ry. Co.*, 260 U.S. 156, 163, 43 S.Ct. 47, 49, 67 L. Ed. 183 (1922); *Wegoland, Ltd. v. NYNEX Corp.*, 27 F.3d 17, 20-21 (2nd Cir. 1994). Moreover, even where a rate is subsequently found to be invalid (which is not the case here), principles barring retroactive ratemaking or restitution prohibit the Commission from ordering the refunds sought by Joint CLECs. See *Mandel Bros., Inc. v. Chicago Tunnel Terminal Co.*, 2 Ill.2d 205, 209, 117 N.E.2d 774 (1954); *Independent Voters of Illinois v. Illinois Commerce Comm’n*, 117 Ill.2d 90, 105, 510 N.E.2d 850, 858 (1987) (refunds only allowed for amounts charged after a rate has been found

invalid). AT&T Illinois is lawfully required to charge the rates approved by the Commission until they are superseded or stayed or lawfully modified in some other manner. Joint CLEC cite to no facts or legal authority that would suggest that the traditional concepts of filed rates and retroactive ratemaking (or refunds) should not operate in the instant case.

VI. MCLEODUSA CROSS EXHIBIT 1 WAS PROPERLY EXCLUDED FROM EVIDENCE

McLeodUSA Cross Exhibit 1 was properly excluded during the hearing. McLeodUSA's attempt to relitigate this issue in the Brief is improper and highly prejudicial. The ALJ's initial Ruling denying the admission of McLeodUSA Cross Exhibit 1 was proper and should not be reconsidered.

The Administrative Law Judge denied admission of McLeodUSA's Cross Exhibit 1 for two sound reasons. First, McLeodUSA (and Joint CLECs) had every opportunity to submit that document into evidence through the direct testimony of their own witnesses, but chose not to do so. McLeodUSA's Cross Exhibit 1 is a three page document that purports to be an amendment between McLeodUSA and Qwest Corporation. It was produced to AT&T Illinois on March 1, 2006 in the discovery process. McLeodUSA had two opportunities after that date to attach that document to its testimony. On March 29, 2006 CLECs filed testimony responsive to matters addressed by Staff. Staff witness Kathy Stewart's Direct Testimony addressed the topic of how AT&T Illinois and collocated CLECs would "arrive at a determination on the measurement of DC power consumption to be billed" (Staff Ex. 1.0 at 17), so the document would have been within the scope of permissible CLEC rebuttal testimony. Joint CLECs also argued for, and obtained, the ability to file surrebuttal testimony to address AT&T Illinois' modified proposal, specifically as it related to the self-certification and audit provisions offered by AT&T Illinois in

its rebuttal testimony. McLeodUSA witness Steven Turner did, in fact, file surrebuttal testimony on March 29, 2006. Again, he chose not to attach McLeodUSA Cross Exhibit 1. This may have been an oversight on his behalf. It may have been a strategic decision to deny AT&T Illinois the ability to respond to the document in its surrebuttal testimony due a week later. In any event, the unvarnished fact is that McLeodUSA could have - but chose not to - submit the document in its own case in chief. It cannot now complain that it was unable to admit the document through the AT&T Illinois witness.

Second, a document is not admissible unless the party seeking admission can establish sufficient foundation. Section 700.610(c) Commission Rules of Practice (83 Ill. Admin. Code 200.610(c). *National Wrecking Co. v. Industrial COMMW*, 352 Ill. App. 3d. 561, 568, 816 N.E. 2d. 727, 728 (1st Dist. 2004), appeal denied, 213 Ill. 2d. 561, 829 N.E. 2d. 789 (2005). The document in question is a McLeodUSA document - not an AT&T Illinois document. AT&T Illinois witness Roman Smith could not provide an adequate foundation for the document because he did not create it, did not use it in his business and was unfamiliar with it. McLeodUSA implies that Mr. Smith must have been familiar with the document but this is unavailing. Mr. Smith plainly testified that he had not read the document. Tr. at 126. And, contrary to McLeod's inferences, Mr. Smith's failure to read that document is completely understandable. McLeodUSA argues that Mr. Smith should have read it because Mr. Smith referred in his testimony to McLeodUSA's response to AT&T Illinois DR 2.07. McLeodUSA's Cross Exhibit 1 was *not* provided with McLeodUSA's response to Data Request 2.07 to AT&T Illinois DR. 2.07. It was merely cross-referenced in that response. Nor was it critical to understanding McLeodUSA's response to Data Request 2.07. The complete data request and response is as follows:

Request:

Separately list all of the incumbent local exchange carriers in the United States with whom you have collocation arrangements and who charge you for collocation power on a non-metered “per amp” basis.

Response:

Qwest Corporation (12 states) bills collocation power on a per amp basis. See Schedule AT&T-1.06.

Data Request 2.07 asked McLeodUSA to identify the ILECs that billed it on a “per amp” basis. The first sentence of the answer was completely responsive; it said that Qwest bills McLeodUSA on a “per amp” basis. The reference to “See Schedule AT&T-1.06” is naturally taken to be supporting information for the proposition that precedes it. Thus, there would be no reason for Mr. Smith to retrieve from some other location the previously-supplied Schedule AT&T-1.06. The second sentence of the response did not qualify or limit the first sentence in any way. For example, it did not say “Qwest bills on collocation on a per amp basis except as provided in Schedule AT&T-1.06”. Mr. Smith therefore relied upon the affirmative representation made by McLeodUSA in its response to Data Request 2.07. As the Administrative Law Judge observed, perhaps Mr. Smith should have read Schedule AT&T-1.06, and he can be criticized for not having done so. However, the case cannot be made that Mr. Smith did read Schedule AT&T 1.06 and then failed to honestly testify to that fact while under oath.

McLeodUSA next makes the astounding argument that Mr. Smith should be constructively charged with all knowledge possessed by AT&T Illinois on the subject matter of his testimony. *Jt. CLEC Br. at 71-72*. This assertion stands on its head the basic evidentiary principle that a witness can testify only about facts within his or her knowledge. If adopted, it would subject all witnesses testifying before the Commission to cross-examination on all

documents and all facts related to a subject matter, regardless of whether or not the witness knows anything about them. The laws of evidence cannot be so easily flaunted.

McLeodUSA's arguments are also highly prejudicial because they are designed to accomplish in the brief what the Administrative Law Judge said they could not accomplish in the hearing room, i.e., introduce and discuss the merits of the Qwest arrangements set forth in McLeodUSA Cross Exhibit 1. And, what is even more questionable, McLeodUSA has made no effort to objectively present the substance of Cross Exhibit 1. Rather, it has selectively presented facts. McLeodUSA provides an extensive quote from Cross Exhibit 1, but omits two sentences that make it clear that, under the arrangement in question, Qwest charges CLECs on an "ordered amp" basis for arrangements of less than 60 amps of power. A complete recitation of Sections 1.1 and 1.2 follow:

1.1 CLEC orders DC power in increments of twenty (20) amps whenever possible. If CLEC orders an increment larger than sixty (60) amps, engineering practice normally terminates such feed on a power board. If CLEC orders an increment smaller than or equal to sixty (60) amps, the terminations will normally appear on a Battery Distribution Fuse Board (BDFB).

1.2 If CLEC orders sixty (60) amps or less, it will normally be placed on a BDFB where no monitoring will occur since the power usage rate reflects a discount from the rates for those feeds greater than sixty (60) amps. If CLEC orders more than sixty (60) amps of power, it normally will be placed on the power board. Qwest will monitor usage at the power board on a semi-annual basis. However, Qwest also agrees to take a reading within thirty (30) Days of a written CLEC request, after CLEC's installation of new equipment. Qwest will perform a maximum of four (4) readings per year on a particular collocation site. Based on these readings, if CLEC is utilizing less than the ordered amount of power, Qwest will reduce the monthly usage rate to CLEC's actual use. If CLEC is utilizing more than the ordered amount, Qwest will increase the monthly usage rate to the CLEC's actual use. Until such time that CLEC places equipment and a request is received from CLEC to monitor, Qwest will bill CLEC based on the amount of power ordered. Once Qwest receives a CLEC monitoring request, it will bill the actual power usage rate from the date of the CLEC's monitoring request until the next reading. The next reading date may be generated as a result of the CLEC request or a Qwest routine reading and Billing will be adjusted on whichever date comes first.

Thus, CLECs must order power in increments of 20 amps “whenever possible” and for orders of less than 60 amps, “no monitoring will occur” and CLECs pay for DC power based on the number of amps ordered (not used). Under this scenario, if a CLEC orders 20 amps, but uses only 5 amps, it nonetheless pays for 20 amps.

Furthermore, AT&T Illinois would be prejudiced if the document were admitted at this late date because we have absolutely no way to respond to it. Had it been admitted at the hearing (and it was properly not) AT&T Illinois could at least have attempted to address the document through the re-direct examination of witness Roman Smith or through cross-examination of Qwest witness Hunnicutt-Bishara. AT&T Illinois obviously did not do so because there was no need at the time. If this document is admitted now, AT&T Illinois will have been denied the right to fully develop the factual record to support its case.

In this vein, McLeodUSA Cross Exhibit 1 presents an incomplete picture. We do not know, for example, what *quid pro quo* Qwest may have received from McLeodUSA in exchange for this particular collocation power arrangement. We do not know what Qwest charges to provide collocation power under these terms and conditions. It may be that McLeodUSA agreed to higher than normal rates to cover these functions. We do not know what business reasons motivated Qwest to take on some of the measurement functions. It may be that its activities as a CLEC out-of-region (as demonstrated by Qwest’s role in *this* case) have influenced the position it takes. In that event, any concessions made by Qwest in Iowa could not be used as a standard for ILEC conduct in Illinois. For these reasons, McLeodUSA Cross Exhibit 1 presents an incomplete picture of the Qwest arrangement and raises many questions. If it had been properly sponsored by a witness for McLeodUSA with knowledge about the way Qwest charges for collocation power, these questions could have been answered. Because of McLeodUSA’s own

tactical decisions, however, these questions cannot be answered and McLeodUSA should not be rewarded for having created this situation.

Finally, McLeodUSA argues that its position is supported by Section 200.670(c) of the Commission's Rules of Practice (83 Ill. Admin. Code Section 200.670(c)), which is essentially a rule of completeness that says when part of a document is entered into evidence, the entire document must be available for examination. This rule does not apply here because McLeodUSA had every opportunity to submit Cross Exhibit 1 in its own surrebuttal testimony. It was therefore "afforded an opportunity to examine" the document (it was, of course, its own document) and to "offer in evidence" the document through its surrebuttal testimony. Nothing about the Administrative Law Judge's Ruling runs a foul of Section 200.670(c).

For all of these reasons, the Commission should reject McLeodUSA's belated and improper attempt to reargue this evidentiary issue and McLeodUSA Cross Exhibit 1 should remain out of this case.

VII. CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in AT&T Illinois' testimony and Initial Brief, the Commission should find that the AT&T Illinois "per amp" proposal is the most fair, accurate, cost-effective and non-disruptive way to bill for DC power used by CLECs. Accordingly, the Commission should approve the tariff filing made by AT&T Illinois, as revised in Schedule RAS-14 to AT&T Illinois Exhibit 5.2.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mark R. Ortlieb, an attorney, certify that a copy of the foregoing **REPLY BRIEF OF AT&T ILLINOIS** was served on the parties on the attached service list by U.S. Mail and/or electronic transmission on May 12, 2006.

Mark R. Ortlieb

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