STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

REPLY BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

The Staff of the Illinois Commerce Commission ("the Staff"), by and through its counsel, and pursuant to Section 200.830 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits its Reply Brief on Exceptions in the above-captioned matter.

In an effort to avoid rehashing what has already been argued, Staff has not addressed in detail each and every assertion made by the parties in their respective BOEs. Instead, Staff reasserts and reincorporates all of the arguments in its Initial Brief and its Brief On Exceptions ("BOE") in this proceeding as though fully set forth herein. Accordingly, where Staff does not respond specifically to an assertion made by another party in its BOE, this should not be deemed a waiver of any argument in support of Staff's position, but rather a decision to stand on arguments that Staff has raised in its prior Briefs.

Staff Reply to Joint CLECs

The Joint CLECs take exception to two of the *Proposed Order*'s findings and conclusions. Joint CLEC Exception No. 1, protests the *Proposed Order*'s conclusion that "each CLEC must submit to AT&T an initial certification of its power usage at each collocation based on a physical measurement of the power usage at the collocation, and that CLECs may not rely on engineering records for their certification." Joint CLECs' BOE at 3, *citing* to *Proposed Order* at 26. Staff will address this Joint CLEC Exception 1. Staff will not, however, address the Joint CLECs second exception, which has to do with CLEC access and related costs for accessing collocation cages to take physical power measurements.

In support of the Joint CLEC Exception 1, the Joint CLECs argue that "CLECs should have the option to make the initial certifications of their collocation power usage based on either physical reads or on engineering and equipment records and analyses, as the CLEC deems appropriate for each of its own collocation sites." *Id*.

Staff had originally recommended that the initial measurements be determined in a collaborative process. Staff Ex. 1. (Stewart) at 17; Staff Ex. 2.1 (Hanson) at 4. Staff's collaborative proposal did not gain much traction with the parties, although it is not clear if either of the parties were expressly opposed to it. AT&T Ex. 5.1 (Smith), at 18 ("AT&T is willing to cooperate (or collaborate) with CLECs in this effort [to determine actual load amps] if the CLEC would like our participation."). Regardless, the issue evolved, apparently due to a lack of

interest on the part of the Joint CLECs. In light of the evolution of this issue, Staff's position also evolved, although ever so slightly. Staff Ex. 1.2 (Stewart) at 7 ("[N]o objections to the self-certification of amperage levels."). At the evidentiary hearing, moreover, Staff witness Ms. Stewart testified that a physical measurement was a more accurate self-certification than reliance upon engineering records. *Proposed Order* at 24, *citing* Tr. (AT&T cross of Stewart) at 620.

In their BOE, the Joint CLECs appear to agree with Staff that engineering records are not as accurate as a physical measurement. Joint CLECs BOE at 9 ("[M]r. Turner indicated that equipment typically operates at power consumption levels *below* List 1 Drain.")(emphasis in original). Staff remains convinced that a measurement system that, admittedly, "typically" under measures power actually consumed does not meet the Commission's usage based directive in the Second Interim Order. As Staff understands the Commission usage based directive, it does not matter who benefits from either under billing or over billing; the usage based directive is a constant either way. *See Proposed Order* at 13, *citing* AT&T Reply Brief at 24 ("AT&T insists that it will actually *under*-recover its DC power costs without the 5-amp minimum.")(emphasis in original). Thus, Staff objected to the AT&T 5 amp minimum primarily because it was not usage based. As noted above, the Joint CLECs implicitly concede this point.

Regardless, however, the Joint CLECs appear to make an equitable argument based upon their past large payments in NRCs to AT&T for a defective measuring system that AT&T unilaterally put in place and that the Joint CLECs

essentially paid for, at least in large part. Joint CLEC BOE at 4-6. The *Proposed Order* addresses this very point and concludes, essentially, that the Commission simply has no authority to "in effect, penalize AT&T, through refund, for allegedly collecting undeserved revenue under its existing tariff." *Proposed Order* at 28. Staff agrees.

Moreover, the *Proposed Order* pointedly noted that not only do the Joint CLECs acknowledge that it "'would be prudent' for the CLECs to measure their own consumption at the outset of an ordered-amp regime," but also that "the initial measurement task should not be meaningfully burdensome or costly for the CLECs – again, so long as adequate time is allowed for that task." *Proposed Order* at 26-27. The *Proposed Order*, of course, adopted the Joint CLECs request for a 180 day period for the purpose of taking the initial power measurements for existing collocation arrangements, rejecting the AT&T 90 day proposal. *Proposed Order* at 29. The *Proposed Order*, furthermore, based its decision to adopt the Joint CLEC 180 day proposal in part on the fact that Joint CLECs argued that "it would be more efficient to set a longer period so that CLECs could have meters read during their technicians [sic] regular visits to collocation arrangements, rather than force them to make special visits simply to measure power consumption. *Proposed Order* at 29, *citing* Joint CLEC Init. Br. at 54. Having argued for the 180 day period to take initial measurements because it allows these meter readings to occur in the regular course of their technician's visits to their collocation cages, Staff finds the Joint CLECs'

argument that "[t]ravel and other administrative time would be burdensome" to lack a degree of credibility. Joint CLEC BOE at 9.

Staff, consequently, finds the *Proposed Order's* conclusions on this issue to be based entirely on record evidence, and eminently reasonable and fair to both parties. For these reasons, Staff recommends that the Commission reject the Joint CLECs position taken in their BOE on who takes the initial physical measurements.

Staff Reply to AT&T

AT&T takes exception to the *Proposed Order's* language that requires CLECs to submit revised certification if the collocator "increases or decreases its total actual DC current drain on a given power delivery arrangement by more than ten (10) amperes between self-certification…[.]" AT&T BOE at 7-10. (AT&T Exception 2). AT&T alleges that one of the reasons the "by more than ten (10) amperes" language should be excluded is because it "re-establish[es] the very 'leakage' situation which the ALJPO intends to eliminate." AT&T BOE at 9.

To the extent removing the language supports Staff's goal to have a certification process that complies with the Second Interim Order's usage based directive, Staff agrees with AT&T's proposed modification.

AT&T also takes exception to language the *Proposed Order* provided regarding AT&T's ability to bill for new collocation arrangements. AT&T BOE at 10-12 (AT&T Exception 3). AT&T argues the *Proposed Order* creates "some ambiguity concerning whether AT&T Illinois can true-up back to the date the CLEC first begins drawing power." AT&T BOE at 11. Staff agrees that a liberal

read of the current language *could* cause under billing. Again, although the Staff does not propose any specific language, Staff recommends the ALJ incorporate clarifying language to the extent that the Proposed Order's language *could* be read as to be inconsistent with the Second Interim Order's usage based directive.

In its Exception 5, AT&T argues that the *Proposed Order* erred in providing that the 51 amp minimum "will not apply to a CLEC power arrangement connected to the main power board *without CLEC consent*." AT&T BOE at 14-16, *citing Proposed Order* at 16 (emphasis added). AT&T contends that the CLEC consent language is simply not necessary. AT&T BOE at 14-15 ("Since the 'problem' sought to be addressed does not actually exist, no 'remedy' is required."). AT&T misses the point in at least two respects. First, AT&T acknowledges that a "problem" has existed, if only *rarely*. The *Proposed Order* expressly acknowledges this point, but, notably, finds that in "those [rare] instances," the "affected CLEC would be billed for more power than it consumed, which would contravene the 2nd Interim Order." *Proposed Order* at 16. Staff agrees entirely with the *Proposed Order* that in these situations, rare or otherwise, the Commission's usage based directive in its Second Interim Order would not be followed.

AT&T further argues that the "without CLEC consent" language would create "needless complexity" and that it already has an "inexpensive remedy" through its "Power Fuse Reduction" option. Staff disagrees with AT&T's arguments. Neither the "needless complexity" argument nor the "Power Fuse Reduction" argument addresses the crux of the problem, which is the

Commission's usage-based directive in its Second Interim Order. *Proposed Order* at 16. The *Proposed Order* accurately zeroes in on the crux of the problem while AT&T's BOE chooses to ignore the usage based directive.

Staff, accordingly, finds the *Proposed Order's* conclusions on this issue, like the issue addressed above, to be based entirely on record evidence, and eminently reasonable and fair to both parties while also abiding by the Commission's usage based directive in its Second Interim Order. For these reasons, Staff recommends that the Commission reject AT&T's fifth exception to the *Proposed Order*.

Conclusion

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted consistent with the arguments above.

Respectfully submitted,

/s/_____

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