

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>In the Matter of</b>	)	
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<b>Proposed Revision to the Collocation Tariffs to Eliminate Charges for DC Power on a Per Kilowatt-hour Basis and to Implement Charging on a Per Amp Basis</b>	)	<b>Docket No. 05-0675</b>
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**REPLY BRIEF ON EXCEPTIONS OF AT&T ILLINOIS**

**I. INTRODUCTION**

Illinois Bell Telephone Company (“AT&T Illinois”) by its attorneys, hereby submit its Reply Brief on Exceptions. This Reply Brief responds to the two (2) exceptions raised by the Joint CLECs in their Brief on Exceptions filed June 19, 2006. Both Joint CLEC Exceptions should be denied.

**1. THERE IS NO BASIS FOR THE RELIEF REQUESTED IN JOINT CLEC EXCEPTION 1**

In Exception 1, Joint CLECs claim that the Administrative Law Judge’s Proposed Order (“ALJPO”) errs in requiring them to base their initial power usage certification on physical measurements rather than on engineering estimates, as the Joint CLECs initially proposed. Their argument should be rejected. The ALJPO already carefully considered and rejected the relief requested by Joint CLECs in Exception 1. ALJPO at 24, 26-28. The ALJPO recognized the critical importance of requiring actual measurements at the outset of the “per amp” system and further recognized that CLECs are in the best position to obtain those actual measurements. Nothing has changed to alter this outcome.

Joint CLECs make three arguments to support their position. Jt. CLEC BOE at 8. None of these arguments justifies the relief they request.

**a. Operational Issues**

First, they devote most of their attention to a handful of operational issues which we discuss in order:

1. Joint CLECs argue that “the costs already incurred by the CLECs in the payment of substantial NRCs” should relieve them of any obligation to take physical measurements. Jt. CLEC BOE at 4-6; 8-10. But this argument was fully evaluated in the ALJPO and was rejected. ALJPO at 27-28. There, the ALJPO recognized the Joint CLEC’s assertion that they have paid, in the aggregate, several million dollars in non-recurring charges under the return-side power metering system. ALJPO at 27. After analyzing the competing arguments on the issues, the ALJPO ultimately concluded that AT&T Illinois was lawfully required to charge the rates approved by the Commission (including the NRCs cited by Joint CLECs) and that a tariff approval proceeding under Section 9-201 of the Public Utilities Act is not the appropriate forum in which to adjudicate “prior conduct” for the purpose of awarding refunds. ALJPO at 28.

2. Joint CLECs next assert that the travel and administrative time needed to conduct physical measurements would be “burdensome”. Jt. CLEC BOE at 9. But the Joint CLECs essentially put no evidence into the record that would quantify and allow the Commission to validate these costs and/or determine whether they would in fact be burdensome. Their exception adds nothing to a record already barren of factual support on this point. Moreover, AT&T Illinois already demonstrated that such measurements would not be burdensome to the Joint CLECs. The record shows that it takes between just 5 minutes (Tr. at 250 (Turner)) and 30 minutes (AT&T Ex. 5.2 at 8) to take an actual measurement at a power delivery arrangement.

Most CLEC collocation arrangements are in the Chicago area so that travel time between them will not be excessive. Most of the remaining arrangements are clustered in other metropolitan areas like East St. Louis, Springfield or Rockford. This “clustering” of collocation arrangements reduces travel time between offices and makes the task of obtaining measured verifications more manageable. AT&T Ill. Br. at 43. In response to the Joint CLEC concern that performing initial measurements would be burdensome, the ALJPO provided a 180 day implementation period to make sure that CLECs “have sufficient time to complete such measurements without undue burden”. ALJPO at 29. Since the ALJPO gives each CLEC 180 days to obtain the initial physical site readings, they have more than enough time to complete this task in a manageable way, as the ALJPO has already concluded.

3. Joint CLECs next argue that a self-certification based on “engineering records” is sufficiently accurate, Jt. CLEC BOE at 9, but this is undercut by their own witness who testified on cross-examination that it would be “prudent” for a CLEC under a self-reporting system to perform a physical measurement at the initiation of the program. Tr. at 249 (Turner); AT&T Ill. Br at 48. He also admitted on recross-examination that a physical site measurement is more accurate than an engineering estimate. Tr. at 296-297. Staff agrees that at least the initial certification should be based on an actual measurement. Tr. at 619-620 (Stewart). The ALJPO acknowledged all of this in Section V.E.5, where it addressed this issue in detail:

The Joint CLECs propose that they be able to determine their power consumption by consulting their engineering records, where available, in lieu of actual physical measurements. “[I]t is possible that a CLEC could have engineering records that identify power consumption.” Joint CLECs Init. Br. at 55. However, the Joint CLECs largely negate that possibility when they say, “because CLECs had no reason to keep such records in the past, their lack of records that satisfy AT&T is not surprising.” Joint CLECs Rep. Br. at 49. Although they vow to maintain such records in the future, *id.*, that will not enable them to make the initial consumption measurements discussed here. Furthermore, the mere existence of records (that is, records that purport to specifically and recently quantify the active power drain of all pertinent equipment) does not establish

their precision regarding actual consumption. There is no record evidence quantifying this<sup>1</sup>. By comparison, all parties concur that hand-held meters are accurate. Staff witness Stewart expressly testifies that physical measurement is superior to engineering records. Tr. 620. Therefore, based on the evidence before us, the Commission cannot find that engineering records are sufficiently available or that they would adequately quantify actual DC power consumption during normal operating conditions.

1. Apparently, by “engineering records,” Joint CLEC witness Turner was referring to the List 1 Drain specified by equipment manufacturers, Tr. 296, which he reasonably presumes the CLECs would have on file. List 1 Drain is “the average ‘busy-hour’ current during normal plant operation, assuming maximum configuration of equipment.” QCC Ex. 1.1 at 4. The record here does not establish that the CLEC equipment involved in this case actually operates at List 1 Drain. Indeed, Mr. Turner indicates it typically operates somewhere below List 1 Drain. Tr. 296.

There is nothing that has changed that should alter this well-reasoned conclusion.

4. Joint CLECs object to the ALJPO’s finding that all CLECs do not have sufficient records and broadly assert that “AT&T did not at any point identify situations in which a CLEC did not have records related to its power consumption”. Jt. CLEC BOE at 9-10. Joint CLECs are wrong, and Covad is the CLEC that proves the point. Covad responded to Staff’s Data Request for information about collocation equipment changes in the past 12 months and 24 months by saying that “at this time, Covad is not aware of any records that it maintains that tracks equipment churn or would enable Covad to make this calculation.” AT&T Ill. Br. at 47-48. Based on this and other information, the ALJPO correctly found that there is serious question about whether CLECs have adequate records to enable them to make the self-certifications they say they can make based on records alone.

5. Finally, the Joint CLEC proposal is fatally vague. They argue that the term “engineering records” refers to “List 1 Drain”, which is typically higher than actual power consumption levels. Jt. CLEC BOE at 9. From this, Joint CLECs argue that their proposal

would result in self-certifications that are “conservative”.<sup>1</sup> The problem is that there is no consistent, understandable standard by which they propose to create a records-based self-certification. Rather, it is variously described as something based on “internal engineering, equipment, or other records” (CLEC BOE at 15); “engineering records and calculations” (Id. at 16); “estimated consumption” (Id. at 9); or “engineering and equipment records and analyses” (Id. at 3, 4). Under this malleable criterion, CLECs could submit self-certifications based not on the List 1 Drain of the installed equipment base, but rather upon unknown (and unknowable) “records”, “analyses” and “calculations”. This would permit a CLEC, for example, to review the inventory of installed equipment at a collocation arrangement (assuming it is available and correct) and to make assumptions about which pieces of equipment are not used at all (and therefore do not contribute to any power usage), which pieces of equipment are being partially used (and thereby require the CLEC to make further assumptions about the energy demands of the partial usage) and which pieces of equipment are being fully utilized (perhaps these pieces of equipment would be certified if List 1 Drain - but this is ultimately just a guess). The end result will be some type of estimate made by the CLEC who understandably has a built-in incentive to resolve close questions in its own favor in order to understate power usage. Simply stated, CLECs have not made the case that this is a reasonable way to establish initial levels of usage.

**b. Virtual Collocation Access**

Second, Joint CLECs assert that since they do not have “ready access” to their virtual collocation sites they should be allowed to base their self-certifications on engineering and equipment records. Jt. CLEC BOE at 10-11. Mr. Turner mentioned the virtual collocation

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<sup>1</sup> Actually, the Joint CLEC BOE says that a self-certification based on engineering records will be “understated”. Jt. CLEC BOE at 9. While this is obviously an inadvertent admission that such self-certifications will specify too little power, it does accurately characterize the likely outcome of the Joint CLEC proposal.

access issue in his testimony (Jt. CLEC Ex. 2.1 at 34-35), but Joint CLECs made little or no use of that fact in the briefing process. It is surprising, therefore, to see this issue take center stage so late in this proceeding. CLEC access to virtual collocations is restricted, but the solution is a simple one and it is one that has governed CLEC virtual collocation arrangements since their inception; CLECs have access to such equipment through pre-approved Tier 1 power vendors who can perform any required work on their behalf, including power usage readings.

**c. Financial Risk**

Third, CLECs argue that they alone bear the financial risk for any under-reporting in self-certifications based on engineering records because AT&T Illinois has robust audit rights. Jt. CLEC BOE at 8, 10. This is wrong for two reasons. To begin with, the very permissive audit mechanism proposed by AT&T Illinois only allows it to backbill if the discrepancy between CLEC-certified usage and actual usage is 10% or more *and* 5 amps or greater. Accordingly, there is a fairly broad “safe harbor” zone within which a CLEC under-certification cannot be detected and cured by an audit. For, example, if a CLEC certifies that it is drawing only 26 amps at a location, but an audit reveals that in fact it is drawing 30 amps, the tariff does not permit AT&T Illinois to backbill because the discrepancy is not at least 5 amps.

Furthermore, Joint CLECs assume that AT&T Illinois will periodically audit every power delivery arrangement, Jt. CLEC BOE at 12, but that is not the case. To the contrary, in the best case scenario, AT&T Illinois expects that audits would be used infrequently. AT&T Ill. Ex. 5.2 at 284-297. If a CLEC power delivery arrangement goes three or four years without an audit, a CLEC could use more than the certified power amount for a long period of time and reduce or terminate its usage before any audit is ever conducted. In that case, the increase usage is never

detected at all. For these two reasons, the Joint CLEC assertion that it alone bears the risk of mis-certification is demonstrably wrong.

The Joint CLEC discussion of “financial risk” is another concession that engineering estimates will never be as accurate as actual readings, because if engineering records were accurate, there would not be any such risks in the first place. This is why the ALJPO concluded that it is perfectly reasonable for the “per amp” proposal to start out using actual power measurements - not mere estimates of usage. Estimates, by definition, will be imprecise and will shift costs from one party to the other to the extent the estimates are out of alignment with actual usage. To avoid any cost shifting inherent in under-reporting (and for that matter, over-reporting) usage, the Commission should retain the ALJPO proposal to start from a position of certainty and accuracy with CLEC-provided physical measurements.

## **II. CLEC EXCEPTION 2 SHOULD BE REJECTED**

In Exception 2, Joint CLECs make a brand-new claim raised nowhere else in this proceeding: they ask that virtual collocation escort fees be eliminated when CLECs need access to their virtual collocations to take power measurements. Jt. CLEC BOE at 12-13. This request is improper from a procedural perspective because it is raised for the first time in the Brief on Exceptions and should be denied for that reason alone. Raising the issue at this late stage in the proceeding deprives AT&T Illinois of the ability to present evidence and argument concerning the issue. For example, there is no evidence in the record concerning the circumstances in which escort charges would apply and the rates that would apply in those circumstances. Given the dearth of facts, it is exceedingly difficult to evaluate and discuss the alleged burden that such fees would place on CLECs.

Furthermore, as the ALJ is aware, AT&T Illinois has demonstrated a willingness throughout this proceeding to modify and revise its proposal in order to accommodate concerns raised by Joint CLECs. Schedule RAS 14 is filled with CLEC-proposed modifications to the Tariff Sheets that AT&T Illinois agreed to accept. Had this escort fee issue been raised earlier, it is possible that AT&T Illinois and CLECs could have found a mutually agreeable resolution. Because the conduct of Joint CLECs has prevented that outcome, they should not be rewarded by granting the relief they request.

At its base, Joint CLEC Exception 2 is simply a request to be exempted from legitimate charges that routinely apply when authorized Tier 1 power vendors access CLEC virtual collocation arrangements to perform work on their behalf. Joint CLECs do not argue that escort fees are too high or that the escort function is unnecessary. They merely argue that escort fees should not be assessed in this instance because it is an extra cost. But this is nothing new - the CLECs raised cost issues throughout this proceeding and argued at length that they were entitled to refunds and exemptions from other fees as compensation for previously-charged NRCs.<sup>2</sup> See, e.g., Jt. CLEC Br. at 19-23 and 39-45. The ALJPO considered these arguments on a comprehensive basis and fashioned a “per amp” system that granted some, but not all, of the cost-avoidance proposals Joint CLECs put forth. It would be inappropriate at this point to grant CLECs another cost concession.

While AT&T Illinois believes that there is no basis to waive applicable escort fees, in the spirit of compromise that it has maintained through-out this proceeding, it is willing to offer a limited waiver of applicable escort fees for approved Tier I power vendors used by a CLEC to access its virtual collocation arrangements for the purpose of performing the *initial* physical

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<sup>2</sup> For example, CLECs successfully argued against the 5 amp minimum and against a 90 day transition period to complete initial measurements (they got 180 days).

measurement required by the ALJPO. Under the ALJPO as it is currently written, the only other physical measurements for which CLECs would be responsible would be those taken in connection with installation or activation of equipment which increases power usage at the collocation arrangement. A CLEC will have to dispatch an authorized Tier 1 power vendor to perform the work in these situations and the power measurement can be taken at the completion of that work. Applicable escort fees would be assessed in this situation because the technician is performing standard installation or maintenance. The escort fee should not be waived merely because the on-site technician also takes a power measurement at the completion of his or her work.

### **III. CONCLUSION**

For all of the reasons set forth above, and for the reasons set forth in the Initial Brief and Reply Brief of AT&T Illinois, the relief requested by CLECs in Joint CLEC Exception 1 and Joint CLEC Exception 2 should be denied.

Respectfully submitted,

ILLINOIS BELL TELEPHONE COMPANY

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**CERTIFICATE OF SERVICE**

I, Mark R. Ortlieb, an attorney, certify that a copy of the foregoing **REPLY BRIEF ON EXCEPTIONS OF AT&T ILLINOIS** was served on the parties on the attached service list by U.S. Mail and/or electronic transmission on June 26, 2006.

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