

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
vs)	
Illinois Bell Telephone Company)	Docket 06-0027
)	
Investigation of specified tariffs declaring certain)	
services to be competitive telecommunications services)	

**BRIEF ON EXCEPTIONS OF DATA NET SYSTEMS, L.L.C. AND
TRUCOMM CORPORATION**

Data Net Systems, L.L.C. and TruComm Corporation (“CLEC Intervenors”) submit this Brief on Exceptions to the Administrative Law Judge’s Proposed Order.

The Proposed Order makes a careful and discerning analysis of the evidence submitted of record. Without reviewing all of the agreements and disagreements with the Proposed Order, CLEC Intervenors submit the instant Brief on Exceptions to address only the section entitled Competition for Package Service, found on pages 69 through 72. Therein the Proposed Order recommends that Illinois Bell Telephone Company d/b/a AT&T Illinois (“Illinois Bell”) package services be classified competitive. In reaching this recommendation, the Proposed Order analyzes various forms of alternative offering to the AT&T residential package services. These alternatives are identified as: 1) wireless and VOIP service; 2) UNE-L, other Facilities Based and Third Party Resale platforms; and 3) UNE-P and LWC. Proposed Order, pp. 71-72. From these alternatives, the Proposed Order finds that only UNE-P provides an effectively competitive alternative to Illinois Bell residential package services throughout MSA-1. Therefore, the final order should clearly indicate that this competitive classification is contingent upon the continue availability of UNE-P under Section 13-801 of the Illinois Public Utilities Act.

The Proposed Order finds that the information regarding wireless and VOIP services is insufficient for the Commission to reach any conclusion regarding any competitive impact they may have under the requirements of Section 13-502. Proposed Order, p. 71. The Proposed Order further found that UNE-L, other Facilities Based and Third Party Resale platforms are not present in every exchange. Proposed Order, pp. 71-72. Of all of the alternatives to AT&T residential package services, only UNE-P and LWC are found to be available throughout MSA-1. Proposed Order, p. 71. However, the Proposed Order recognizes that LWC and Third Party Resale do not provide an effective competitive platform for AT&T retail local service prices for some or all of the specific package rates at issue (although the Proposed Order found that these platforms could be bundled with long distance services to make them attractive with consumers). Proposed Order, p. 72. As such, the finding of a competitive classification rests fundamentally upon the availability of UNE-P through Section 13-801 of the Illinois Public Utilities Act. The Proposed Order further recognizes that this section of the Illinois Act is currently under review in Federal Court at the request of Illinois Bell, which seeks to have that statutory provision preempted by federal law. Nevertheless, the Proposed Order finds that it can not base its opinion on speculation of whether that the Commission's determinations regarding Section 13-801 will be overturned. Proposed Order, p. 71.

CLEC Intervenors do not take issue with the Proposed Order's findings that it must base its recommendation on the facts that exist at the time of the order, or that it would be inequitable for the Commission to speculate as to the possible outcome of that proceeding. However, by basing its determination on the facts existing at the time of the order, one of those facts is the ongoing challenge to the statute authorizing the continued provisioning of the UNE-P that the Proposed Order finds fundamental to the competitive classification. Just as the Proposed Order

must take into consideration the existence of the UNE-P, it must also consider the existence of the threat to the continued availability of Section 13-801 UNE-P facilities, and Illinois Bell's stated position that it will not offer UNE-P should it be successful in that Federal Court proceeding. Since the record reflects that the UNE-P is currently available under Section 13-801, and also that Section 13-801 is subject to an imminent determination as to its continued viability, the Commission must recognize in this order both factors that affect the basis underlying the proposed competitive classification of Illinois Bell residential package services. Therefore, the Proposed Order should recognize that the competitive classification of Illinois Bell's residential package services under this order is contingent upon the continued provisioning of UNE-P facilities under Section 13-801.

Additionally, the Proposed Order recognizes that LWC does not provide effective competition to some or all of the specific package rates at issue here. The further statement that LWC can be combined with a long distance service to make it attractive to consumers does not substitute for LWC's ineffective control over Illinois Bell's basic residential packages. Furthermore, the record reflects that even in combination with long distance services, these offerings fail to provide effective competition. The largest long distance carriers, AT&T and MCI, were unable to continue in competition with Illinois Bell even though LWC was available to them. The long distance market became increasingly competitive over the past twenty years, where the margins have shrunk to the point of providing insufficient revenues to compete against the monopoly local exchange company. The record reflects that the LWC is priced substantially over the Commission's cost-based rates for UNE facilities, enabling Illinois Bell to generate large margins of profit from local residential services that are not available to other carriers utilizing the LWC platform. Not only are minimal long distance revenue margins insufficient to

offset Illinois Bell's large local revenue margins over LWC, but the additional revenue margins provided by long distance services are equally available to Illinois Bell and cannot serve to offset the LWC shortcomings. Therefore, even in combination with low margin long distance packages, LWC does not provide other carriers either the ability to compete with or to regulate the pricing of Illinois Bell residential package services. Reference to such bundlings should be stricken.

The Proposed Order concludes that the record does not support the finding that Illinois Bell residential package services are competitive based upon wireless or VOIP services. Neither does the record support a finding that these Illinois Bell package services are competitive based upon UNE-L, other Facilities Based or Third Party Resale platforms. These platforms only supplement the base competition provided through UNE-P, but do not supply sufficient competition throughout every exchange sufficient support classifying Illinois Bell's residential package services as competitive. Similarly, LWC does not provide effective competition to Illinois Bell's residential package services. The competitive base or classification of Illinois Bell residential services rests upon the UNE-P, as supplemented in one form or another by UNE-L, Facilities Based and Third Party Resale platforms. Although UNE-P is currently available pursuant to Commission order, the record also reflects that UNE-P continued viability is currently subject to challenge in an ongoing proceeding in Federal Court brought by Illinois Bell. To classify the Illinois Bell residential package services as competitive based upon the existence of UNE-P, the Commission's order must reflect the clear basis on which the classification rests.

Therefore, the CLEC Intervenors respectfully submit that the Proposed Order be amended to state that the competitive classification of Illinois Bell residential package services is based upon the existence of the UNE-P as offered pursuant to Section 13-801 of the Illinois

Public Utilities Act. The competitive classification, upon which this order is based, is subject to continued Section 13-801 UNE-P availability. Accordingly, the Proposed Order should provide that in the event UNE-P, as authorized by Section 13-801 of the Illinois Public Utilities Act, ceases to be available, the competitive classification of Illinois Bell residential package services through the instant order would be vacated and the residential package services would be reclassified as noncompetitive automatically. Illinois Bell would remain free to seek a competitive classification through any means available to it under the Illinois Public Utilities Act, i.e. through either self reclassifying its residential service packages as competitive, or petitioning the Commission for a determination that such services should be classified as competitive under the facts existent at that time. 220 ILCS 5/13-502.

CLEC Intervenors respectfully submit that the Proposed Order should be amended with the following proposed language on pages 71-72 to reflect this determination.

The evidence indicates that the UNE-P and LWC are available throughout MSA-1. UNE-L, other Facilities Based and Third Party Resale platforms, although not present in every exchange, in aggregate provide additional substantial evidence of competition for AT&T's residential package offerings. While we agree that LWC and Third Party Resale do not provide effective competitive platforms with AT&T retail local service prices for some or all of the specific package rates at issue here, competitors utilizing these platforms can bundle their offerings with long distance service to make them attractive to consumers. The Commission must base its determination of the classification of AT&T's residential package services based upon the facts of record before the Commission at the time of the order. The facts of record in this proceeding establish that AT&T residential package services are appropriately classified as competitive based upon the existence of competition from UNE-P services available throughout MSA-1 supplemented by UNE-L, other Facilities Based, and Third Party Resale platforms. The record further reflects that the base for this competitive classification, UNE-P, is presently challenged by AT&T in the Federal Courts. Therefore, the competitive classification finding approved in the instant order is based upon the continued existence of the UNE-P provisioning as required by Section 13-801 of the Illinois PUA. Should that UNE-P be terminated, the competitive classification of AT&T residential package services would similarly be terminated and those services would be classified as noncompetitive according to the instant order. AT&T would continue to have the option to seek the

competitive classification for those services under any means available to it pursuant to Section 13-502 of the Illinois PUA. However, AT&T residential package services would not be classified competitive through facts of this record or according to this order.

CLEC Intervenors further propose the following language changes to the section entitled “IX. FINDINGS AND ORDERING PARAGRAPHS.” on page 120, paragraphs (4) and (5) should be amended to read as follows:

4. for those residential services classified by AT&T Illinois as competitive in its November 10, 2005 tariff filing, that are identified in Appendix A of this Order, the same services, with the functional equivalent, or substitute services are reasonably available to residential customers in the Chicago LATA from more than one provider subject to the continuing provision of the UNE-P under Section 13-801 of the Act;
5. based on Finding (4), above, and taking into consideration all of the factors identified in Sections 13-502(c)(1)-(5) of the Act, those residential services classified by AT&T Illinois as competitive in its November 10, 2005 tariff filing, which are listed in Appendix A, are properly classified as competitive under Section 13-502(b) of the Act subject to the continued availability of the UNE-P pursuant to Section 13-801 of the Act;

CLEC Intervenors further submit that the following changes to the Proposed Order on page 120-124:

IT IS THEREFORE ORDERED that those residential services classified by AT&T Illinois specifically listed in Appendix A attached hereto shall remain classified as competitive; subject to the continued availability of the UNE-P under Section 13-801 of the Act. Should the UNE-P under the provision of Section 13-801 of the Illinois Act no longer be available, the classification of the services listed in appendix A shall be classified as noncompetitive according to this order. Other services declared competitive on November 10 listed in Appendix B above, are hereby reclassified as noncompetitive.

CONCLUSION

For the reasons set forth in this Brief on Exceptions, Data Net Systems, L.L.C. and TruComm Corporation respectfully request that the Commission modify the Administrative Law Judge’s Proposed Order in accordance with the exceptions set forth herein.

Respectfully submitted,

Data Net Systems, L.L.C.
TruComm Corporation

By: _____/s/_____
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July 27, 2006

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NOTICE OF FILING

To: Service List Attached

You are hereby notified that I have this 27th day of July, 2006 filed with the Chief Clerk of the Illinois Commerce Commission the Brief on Exceptions of Data Net Systems, L.L.C. and TruComm Corporation via the electronic e-docket system.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Brief on Exceptions of Data Net Systems, L.L.C. and TruComm Corporation were served upon the parties on the attached service list via electronic email on July 27, 2006.

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