

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
vs.)	Docket No. 06-0562
Illinois Bell Telephone Company,)	
Verizon North, Inc., and Verizon South, Inc.)	
)	
Investigation into the applicability of Section)	
2-202 of the Public Utilities Act to intrastate)	
coin drop pay telephone revenues)	

COMMENTS OF ILLINOIS BELL TELEPHONE COMPANY

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Illinois Bell Telephone Company (“AT&T Illinois” or “the Company”), hereby submits its initial Comments in this proceeding.

I. INTRODUCTION

This proceeding was initiated by the Commission for the purpose of answering the following question: “Whether intrastate coin drop pay telephone revenues collected by Illinois Bell Telephone Company, Verizon North, Inc. and Verizon South, Inc. are ‘gross revenues’ as defined in the Public Utilities Act and subject to the tax on gross revenues pursuant to Section 2-202 of the Public Utilities Act.” *Order*, Docket No. 06-0562, p. 3 (Aug. 6, 2006).

The answer to this question is clearly “no” as it relates to revenues collected by AT&T Illinois for local (Bands A and B) coin drop payphone calls.¹ As defined in Section 2-202 of the Illinois Public Utilities Act, “gross revenues” do not include revenues collected under rates or charges that are not subject to regulation, including the PUA’s tariffing requirements. In 1996, the Federal Communications Commission (“FCC”), exercising its authority under Section 276 of the Telecommunications Act of 1996 (the “1996 Act”), preempted states from regulating rates

¹ Band A calls are calls made within 0 to 8 miles. Band B calls are calls made over 8 miles up to 15 miles. (Parker Affidavit, ¶ 8).

for local coin payphone service, effective October 7, 1997. Consistent with the FCC's ruling, AT&T Illinois detariffed its rates for local coin payphone service effective March 31, 1998. AT&T Illinois took this action with the full knowledge of the Commission and its Staff, and with the approval of the Commission's Office of General Counsel. Accordingly, the revenues derived by AT&T Illinois from local coin payphone calls are not "gross revenues" within the meaning of Section 2-202 of the Act.

II. BACKGROUND AND STATEMENT OF FACTS

Congress enacted Section 276 of the 1996 Act "to promote competition among payphone service providers" by directing the FCC to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed call using their payphone." 47 U.S.C. §§ 276(b)(1), 276(b)(1)(A). Pursuant to its authority under Section 276, the FCC concluded that, after October 7, 1997, the market "should set the compensation amount for all payphone calls, including local coin calls," unless "market failures" can be demonstrated to exist. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC 96-388, ¶¶ 56, 60-61 (rel. Sept. 20, 1996) (the "Payphone Order"). The FCC concluded that a "deregulatory market-based approach to setting local coin rates is appropriate." *Id.* at ¶ 58. In its *Order on Reconsideration*, the FCC reaffirmed this approach, which it described as the "deregulation of local coin rates." *Order on Reconsideration*, FCC 96-439, ¶ 10 (rel. Nov. 8, 1996).

Section 276(c) of the 1996 Act provides that the FCC's authority with respect to compensation for payphone calls is preemptive: "To the extent that any State requirements are inconsistent with the [FCC's] regulations, the [FCC's] regulations on such matters, shall preempt such State regulations." 47 U.S.C. ¶ 276(c). Accordingly, the FCC's *Payphone Order* preempts

state regulation of rates for local coin payphone calls after October 7, 1997. The preemptive effect of the *Payphone Order* was expressly recognized and affirmed on appeal. *Illinois Public Telecommunications Ass'n. v. FCC*, 117 F.3d 555, 561-63 (D.C. Cir. 1997) (holding that the FCC “has been given an express mandate to preempt State regulation of local coin calls”).

In a subsequent accounting order, the FCC made it clear that “the *Payphone Order* deregulated” local coin payphone service and directed that revenues from such “nonregulated payphone service” be recorded in Account 5010 of the FCC’s Uniform System of Accounts (“USOA”), which has been adopted by this Commission. *Local Exchange Carriers Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs*. AAD 97-9, et al., *Memorandum Opinion and Order*, DA 97-1244, ¶¶ 16, 17 (rel. June 13, 1997). The FCC later authorized ILECs to transfer payphone revenues in Account 5010 to Account 5280, “Nonregulated Revenues.” *United States Telephone Association Petition for Waiver of Part 32 of the Commission’s Rules*, AAD 97-103, Order (rel. Dec. 31, 1997). In accordance with these accounting rules, beginning in 1997, AT&T Illinois has recorded revenue from the provision of local (Bands A and B) coin payphone services in Account 5280, “Nonregulated Revenue.”

In 1997, the Commission Staff initiated a workshop process for the purpose of addressing issues related to implementation of the rulings made by the FCC in the *Payphone Order*. Based on comments submitted during the workshop process, there was a difference of opinion between the Commission Staff responsible for this issue (represented by Rasha Toppozada-Yow) and AT&T Illinois over whether local end user coin payphone rates should be detariffed. In a memorandum dated February 24, 1997, Staff took the position that local coin payphone tariffs should remain on file both before and after October 7, 1997 (when such rates became deregulated pursuant to the *Payphone Order*) to provide consumers with “. . . information and

price disclosures.” In responsive comments dated March 14, 1997, AT&T Illinois took the position that Staff’s approach was inconsistent with the FCC’s *Payphone Order* which mandated a market-based deregulatory approach, and, therefore, that the state tariffing requirements under the PUA were preempted. (Sunderland Affidavit, ¶ 5; Parker Affidavit, ¶¶ 6, 7).

To resolve this conflict, AT&T Illinois’ counsel, Louise A. Sunderland, arranged a meeting between the Commission Staff and AT&T Illinois. In attendance at the meeting were Ms. Sunderland, Ms. Topozada-Yow, and Darryl Reed, a lawyer with the Commission’s Office of General Counsel (“OGC”). At the meeting, Ms. Sunderland and Ms. Topozada-Yow explained the respective positions of AT&T Illinois and the Commission Staff to Mr. Reed. (Sunderland Affidavit, ¶ 7). Subsequently, Mr. Reed contacted Ms. Sunderland and advised her that the OGC agreed with AT&T Illinois’ position that the FCC’s *Payphone Order* preempted the application of Illinois’ tariffing requirements to local coin payphone rates because the PUA does not provide for “informational tariffs.” Ms. Sunderland told Mr. Reed that AT&T Illinois would be making a filing removing local coin calls from its retail payphone tariff. Mr. Reed indicated that the OGC had no objection to such a filing and would not recommend initiation of an investigation into the filing. (Sunderland Affidavit, ¶ 8).

On March 25, 1998, AT&T Illinois filed tariff sheets (Advice No. 5819) to effect the detariffing of its local coin payphone rates, effective March 31, 1998. As explained in both the letter and the Background Memorandum accompanying the filing, the only rates being detariffed were those for local (Bands A and B) coin sent calls, i.e., the rates for which state regulation was preempted by the FCC. AT&T Illinois has not detariffed rates for non-local (Band C and intraLATA toll) coin calls or rates for non-sent paid calls (collect and calling card calls). (Parker Affidavit, ¶¶ 8, 9). In deciding to make this filing, AT&T Illinois relied in part on Mr. Reed’s

statement to Ms. Sunderland that the OGC agreed with Illinois Bell's position that the FCC's decision to preempt state regulation of local coin payphone rates also preempted application to those rates of the PUA's tariffing requirements. (Parker Affidavit, ¶ 10). No investigation has ever been initiated into the March 25, 1998 filing.

AT&T Illinois files an Annual Gross Revenue Return with the Commission each year. The Annual Gross Revenue Return is used to calculate the amount of Gross Revenue subject to the public utility fund ("PUF") tax under Section 5/2-202 of the PUA. In calculating Gross Revenue, AT&T Illinois properly deducts nonregulated revenue booked to Account 5280. For each year beginning with 1997, the revenue booked to Account 5280 (and, consequently, the revenue deducted from reported taxable Gross Revenue) has included revenue derived from local coin payphone service. (Dominak Affidavit, ¶ 4).

AT&T Illinois, however, has always included, and continues to include, in its reported taxable Gross Revenue all revenue from intrastate payphone services for which rates have not been deregulated. These include intraLATA Toll and Band C (i.e., non-local) coin revenue (which are booked to Account 5100, "Long Distance Message Revenue") and non-sent paid (collect and calling card) revenues (booked to Accounts 5001, "Basic Area Revenue," and 5060, "Other Basic Area Revenue"). Such payphone revenues have always been fully included on the Gross Revenue reported by AT&T Illinois in its Annual Gross Revenue Returns. (Dominak Affidavit, ¶ 5).

In a letter to AT&T Illinois dated November 8, 2004, Bill Baima of the Commission's Financial Information Section asserted that payphone revenues are "taxable and should also be tariffed." Mr. Baima requested that AT&T Illinois review its Annual Gross Revenue Tax Returns for the years 1998 through 2003 "and verify that these revenues were properly calculated

and included in the tax calculations on the tax returns filed for these years.” (Dominak Affidavit, ¶ 6). In a letter dated December 22, 2004, AT&T Illinois responded to Mr. Baima’s letter, explaining that “while [AT&T Illinois] agrees that revenue derived from intrastate payphone services for which rates are subject to Commission regulation are subject to the PUF tax, that tax does not apply to revenues from non-regulated payphone operations, including the provisioning of local coin payphone service and payphone customer premises equipment (“CPE”).” (Sch. TD-2). AT&T Illinois further advised Mr. Baima that it had “reviewed its Annual Gross Tax Returns for each of the years 1998 through 2003 and verified that it correctly included revenues from regulated intrastate payphone operations in the calculation of Gross Revenues on which the PUF tax was calculated for each year.” (*Id.*, ¶ 7).²

III. ARGUMENT

The only question in this case is whether the revenue derived from local coin payphone calls are subject to the PUF tax.³ The answer to that question is clearly “no.”

The PUF tax is a tax imposed on a public utility’s “gross revenues.” 220 ILCS 5/2-202(c). For purposes of the PUF tax, “gross revenues” means “revenue which is collected by a

² AT&T Illinois further informed Mr. Baima that, in the course of its review, AT&T Illinois discovered that it overstated the amount of taxable Gross Revenue for the years 1998 through 2001 as a result of the improper inclusion of certain revenues, including non-regulated semi-public payphone revenues. AT&T Illinois, therefore, submitted with its letter Amended Returns for the years in question. As detailed in the letter, “the result of these Amended Returns is to increase from \$314,282 to \$940,341, the PUF tax credit currently owed to SBC Illinois by the Commission.” Follow-up requests for issuance of the credits were made by AT&T Illinois in letters sent to Mr. Baima on April 27, 2005 and June 30, 2006. AT&T Illinois has not yet received any portion of the claimed PUF tax credit from the Commission. (Dominak Affidavit, ¶ 7).

³ The “Telecommunications Division Staff Report” (the “Staff Report”), dated August 1, 2006, which led to the initiation of this proceeding, states that it is AT&T Illinois’ contention that “the Commission has no jurisdiction over payphone services, and that the PUF tax cannot be imposed upon revenues derived from payphone services.” Staff Report, p. 2. This statement is a mischaracterization of AT&T Illinois’ position. AT&T Illinois has never asserted that the Commission has “no jurisdiction over payphone services” or that all revenues derived from payphone services are to be excluded from the PUF tax. To the contrary, as discussed in Section II, above, the only payphone revenues that AT&T Illinois has excluded from Gross Revenues are revenues derived from local (Bands A and B) coin-sent payphone calls and payphone CPE. AT&T Illinois has always paid the PUF tax on revenues derived from non-local (Band C and intraLATA toll) coin-sent payphone calls and non-sent paid (i.e., collect and calling card) payphone calls.

utility subject to regulations under this Act (a) pursuant to the rates, other charges, and classifications which it is required to file under Section 9-102 of this Act and . . . (2) is derived from the intrastate public utility business of such a utility.” 220 ILCS 2/3-121. Section 9-102 of the PUA refers to the tariff filing requirements to which the regulated rates and charges of telecommunications services are subject pursuant to 13-503 of the PUA. 220 ILCS 5/13-503. The term “intrastate public utility business” means that portion of a public utility’s business “over which this Commission has jurisdiction under the provisions of this Act.” 220 ILCS 5/3-120.

Thus, “Gross Revenues” do not include revenues collected under rates or charges that are not subject to regulation (including tariffing requirements) under the PUA and over which the Commission does not have jurisdiction. As discussed above in Section II of these Comments, there can be no dispute that the FCC, pursuant to its authority under Section 276 of the 1996 Act, preempted state regulation of the rates charged by AT&T Illinois for coin-sent local payphone calls, effective October 7, 1997. *Payphone Order*, ¶¶ 55-61; *Illinois Public Telecommunications Ass’n. v. FCC*, 117 F.3d 555, 561-63 (D.C. Cir. 1997) (holding that FCC “has been given an express mandate to preempt State regulation of local coin calls”). Accordingly, revenues derived from local coin payphone calls clearly do not constitute “gross revenues” within the meaning of Section 3-121 of the PUA and, therefore, are not subject to the PUF tax.

The Staff Report asserts that states “retain jurisdiction over payphone services although they no longer set local coin rates.” Staff Report, p. 2. The fact that the Commission may retain jurisdiction over some aspects of payphone services other than local coin rates does not, however, make the revenues derived from local coin rates part of “gross revenues” under Section 3-121 of the PUA. Under Section 3-121, the relevant factor in determining whether the PUF tax

applies is whether the rates and charges for a particular service are subject to regulation and the PUA's tariffing requirement. If the rates for a service are *not* subject to such regulation, the revenues derived from those rates are not subject to the PUF tax even if the Commission retains jurisdiction to regulate non-rate aspects of the service. Thus, for example, the Illinois Appellate Court has held that because the Commission has "excluded the cellular industry from rate regulation," rates charged by cellular companies are not subject to PUF tax liability even though the Commission retains authority to regulate other aspects of cellular service. *Chicago SMSA Limited Partnership v. Illinois Dept. of Revenue*, 306 Ill. App. 3d 977, 984 (1st Dist. 1999), citing *Chicago SMSA, Ltd. Partnership v. Illinois Commerce Commission*, 284 Ill. App. 3d 326 (1996).

The Staff Report also asserts that "states continue to have the ability to set rates for local collect calls from payphones" and that regional Bell operating companies are required by the FCC to "tariff wholesale payphone service rates." Staff Report, p. 2. These assertions are irrelevant. As previously discussed, the only intrastate retail payphone revenues that AT&T Illinois excludes from "gross revenues" are revenues from local coin-sent calls; AT&T Illinois has always paid the PUF tax on local *collect* calls. Revenues from wholesale payphone service, on the other hand, are excluded from "gross revenues" pursuant to the provision of Section 3-121 which states that the term "gross revenues" "does not include revenue derived by such a public utility from the sale of public utility services, products or commodities to another public utility . . . for resale by such public utility." 220 ILCS 5/3-121. The wholesale service exclusion from the definition of "gross revenues" is not at issue in this case.

The Staff Report also argues that the Commission "has not lifted the tariffing requirement for pay telephone services." While the Commission may not have "lifted" the tariffing requirement, the fact remains that the FCC has preempted state regulation of local coin payphone

rates. The PUA's tariffing requirement is part and parcel of the regulation of rates.⁴ Thus, by preempting the Commission from regulating local coin payphone rates, the FCC also preempted the Commission from imposing the tariffing requirement under Section 9-102.⁵

In taking the position that the *Payphone Order* does not preempt the tariffing requirement for local coin payphone rates, the Staff Report cites the FCC's conclusion that states "remain free to impose regulations, on a competitively neutral basis, to provide customers with information and price disclosure." *Payphone Order*, ¶ 60. As discussed above, however, the PUA's tariffing requirement is applicable only to regulated rates. Under Illinois law, there is no "informational only" tariffing requirement for nonregulated rates, a fact which the Commission's Office of General Counsel ("OGC") recognized in 1998 when it agreed with AT&T Illinois that the *Payphone Order* allowed AT&T Illinois to detariff its local payphone coin rates. (Sunderland Affidavit, ¶ 8). Thus, the FCC's reference to states' ability to require "information and price disclosure" does not permit the Commission to impose the PUA's tariffing requirements on local coin payphone rates. Rather, the *Payphone Order* would allow the Commission to adopt information and price disclosure requirements that do not involve Section 9-102 tariffs. For example, the FCC would permit states to require a certain amount of rate disclosure on the payphone placard or require the establishment of toll-free numbers where customers can obtain payphone rate quotes.

⁴ For example, Section 13-502 of the PUA requires that any services provided "under tariff" shall be classified as either "competitive" or "non-competitive." 220 ILCS 5/13-502(a). Tariffed "competitive" rates are required to be "just and reasonable" (220 ILCS 5/13-101) and are subject to Commission review for reasonableness in complaint proceedings under Section 9-250 (220 ILCS 5/13-505(b)).

⁵ The fact that tariffing requirements are an aspect of rate regulation is recognized by the Uniform System of Accounts for Telecommunications Carriers in Illinois. The instructions for "regulated accounts" states that "regulated accounts shall be interpreted to include the investments, revenues and expenses associated with those telecommunications products and services to which the tariff filing requirements are applied, except as may be otherwise provided in 83 Ill. Admin. Code 711.15 or 712.15." 47 U.S.C. § 32.14, as modified and adopted in 83 Ill. Admin. Code Section 710.14. The accounting instructions further provide that "[p]reemptively deregulated activities . . . will be classified as 'non-regulated.'" 47 U.S.C. § 32.23, as modified and adopted in 83 Ill. Admin. Code Section 710.23. As previously discussed, pursuant to the FCC's direction, AT&T Illinois accounts for local coin payphone revenue as "non-regulated."

In any event, even if the PUA's tariffing requirements do apply to local coin payphone rates (and they clearly do not, for the reasons discussed), that would still not justify the conclusion that local coin payphone revenues are "gross revenues" within the meaning of Section 3-121. As previously discussed, "gross revenues" do not include revenues collected under rates over which the Commission does not have jurisdiction, whether or not the PUA is construed as authorizing the Commission to impose an "information only" tariff requirement with respect to such rates.

For all the reasons discussed, the Commission should conclude that revenues collected by AT&T Illinois under rates for local coin-sent payphone calls do not constitute "gross revenues" under Section 3-121 of the PUA and, therefore, are not subject to the PUF tax under Section 2-202 of the PUA.

In the event that the Commission disagrees with AT&T Illinois' position and accepts the Staff Report's argument that local coin payphone revenues are subject to the PUF tax because they are subject to an "informational tariffing" requirement, the PUF tax should be imposed on AT&T Illinois on a prospective basis only. As previously discussed, AT&T Illinois acted in good faith, with the full knowledge of the Commission and its Staff, and with the express approval of the OGC, when it made the filing to detariff its local coin payphone rates in March of 1998. The Commission has never investigated that filing. Accordingly, even if the Commission deems it appropriate to now impose a tariffing requirement (and any such action would be in violation of the *Payphone Order's* ruling preempting state regulation of local coin payphone rates), it would be improper and unfair for the Commission to retroactively apply that tariffing requirement in an attempt to retroactively collect PUF taxes on payphone revenues that AT&T Illinois has properly excluded from "gross revenues" since 1997.

IV. CONCLUSION

For all the reasons discussed, the Commission should find that the revenues derived by AT&T Illinois from rates for local coin payphone calls do not constitute (and have not, since 1997, constituted) “gross revenues” subject to the PUF tax under Section 2-202 of the Illinois PUA.

Respectfully submitted,

ILLINOIS BELL TELEPHONE COMPANY

A handwritten signature in cursive script, appearing to read 'Karl B. Anderson', written over a horizontal line.

One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Karl B. Anderson, an attorney, certify that a copy of the foregoing **COMMENTS OF ILLINOIS BELL TELEPHONE COMPANY** and supporting Affidavits Larry G. Parker (with attached Schedules LGP-1, LGP-2, and LGP-3), Timothy Dominak (with attached Schedules TD-1 and TD-2), and Louise A. Sunderland were served on the following parties by U.S. Mail and/or electronic transmission on October 17, 2006.


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