

IN THE APPELLATE COURT OF ILLINOIS  
FOR THE FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, )  
*ex rel.* LISA MADIGAN )  
ATTORNEY GENERAL OF THE STATE OF ILLINOIS )

Petitioner – Appellant, )

vs. )

No. 06-3014

ILLINOIS COMMERCE COMMISSION, ILLINOIS )  
BELL TELEPHONE COMPANY, CITIZENS UTILITY )  
BOARD, CITY OF CHICAGO, COOK COUNTY )  
STATE'S ATTORNEY'S OFFICE, AARP ILLINOIS, )  
GALLATIN RIVER COMMUNICATIONS LLC, )  
TRUCOMM CORPORATION AND DATA NET )  
SYSTEMS )

Petition for Review of  
Orders of the Illinois  
Commerce Commission  
in Docket No. 06-0027

Respondents – Appellees. )

**NOTICE OF FILING**

TO: Elizabeth A. Rolando, Chief Clerk  
Illinois Commerce Commission  
527 E. Capitol Ave.  
Springfield, Illinois 62706

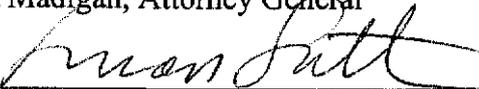
All parties and persons on  
attached Service List

PLEASE TAKE NOTICE that on October 24, 2006, Petitioner-Appellant the  
People of the State of Illinois filed with the Clerk of the Appellate Court, First Judicial  
District, the original and three copies of the attached Petition for Review, a copy of which  
is hereby served upon you.

Dated: October 24, 2006

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS  
Lisa Madigan, Attorney General

By: 

Susan L. Satter  
Sr. Assistant Attorney General  
Public Utilities Division  
Illinois Attorney General's Office  
100 W. Randolph, 11<sup>th</sup> floor  
Chicago, IL 60601  
(312) 814-1104

06-3014

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FOR THE FIRST JUDICIAL DISTRICT

FILED APPELLATE COURT  
1ST DIST.

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STEVEN M. RAWO  
CLERK OF COURT

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 TRUCOMM CORPORATION AND DATA NET )  
 SYSTEMS, L.L.C )  
 Respondents – Appellees. )

No. \_\_\_\_\_

Petition for Review of  
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**PETITION FOR REVIEW**

The People of the State of Illinois (“the People”), pursuant to Illinois Supreme Court Rule 335 and Section 10-201 of the Public Utilities Act (220 ILCS 5/10-201), hereby petition this Court for review of the Final Orders of the Illinois Commerce Commission (“ICC” or “the Commission”) in ICC Docket No. 06-0027, entered on August 30, 2006, served on August 31, 2006, and amended and served on September 7, 2006 (Order correcting its August 30, 2006 Order); and entered on October 12, 2006 and served on October 13, 2006 (Order denying the People’s Application for Rehearing as well as the Applications for Rehearing filed by Illinois Bell Telephone Company and TruComm Corp. and Data Net Systems). The Application for Rehearing filed by AARP on October 2, 2006 was denied as a matter of law under Section 10-113 of the PUA on October 23, 2006. No further post-judgment motions are before the Commission.

The People seek reversal of these Orders because the Commission's August 30, 2006 Order as amended on September 7, 2006 violates the Public Utilities Act ("the Act" or "PUA"), is not supported by substantial evidence, and the Commission erred as a matter of law in allowing stand-alone local telephone services in northeast Illinois (the Chicago LATA), including but not limited to network access, measured service, and Caller-ID and Call Waiting, provided by Illinois Bell Telephone Company, to be classified as competitive telecommunications services. The Commission acknowledged and the record evidence showed that there are no competitive alternatives available to consumers of these telecommunications services. The Orders fail to recognize that the General Assembly has historically treated network access and measured service as unique and separate services that should be preserved to protect consumers from price increases and to promote universal service. 220 ILCS 5/13-506.1(c). The Commission also failed to consider all of the factors listed in Section 13-502(c) of the Act, erred in relying on the "public interest" aspect of Section 13-502(c)(5) while disregarding the other factors specified in Section 13-502 of the Act, and instead attempted to promote competition by raising consumers' rates, in violation of Section 13-502 of the Act. 220 ILCS 5/13-502. Its conclusion to classify these services as competitive was not supported by substantial evidence and violated Sections 13-203, 13-501 and 13-502 of the PUA. 220 ILCS 5/13-203, 13-501, 13-502.

Further, these Orders adopted the terms of a settlement proposal submitted by only two of the ten parties to the docket, that are not supported by the record, are not within the Commission's authority to impose in the absence of a settlement, and that violate the rules for Commission review of settlements set forth by the Illinois Supreme Court in Business and Professional People for the Public Interest, 136 Ill.2d 192 (1989) ("BPI I). The Proposal

approved in the Orders addressed pricing and provided for various rate changes, none of which the Commission considered in light of the just and reasonable standard applied to rates or the specific procedures or standards for ratemaking outlined in sections 13-505, 13-506.1, 13-518, 9-250, 10-101 and 10-110 of the Act. 220 ILCS 5/13-505, 13-506.1, 9-250, 10-101, 10-110. In addition, the Orders' conclusion that the rate changes and customer education campaign in the Joint Proposal would promote competition is not supported by substantial evidence. It erroneously permits Illinois Bell to increase the prices for network access and measured service and stand-alone services notwithstanding the lack of alternatives for those services at either the original or the new prices, and authorizes the decrease of other prices to levels below those offered by existing competitors. The Commission's conclusions are not authorized by the PUA and the Commission erred as a matter of law in considering these provisions a part of its decision on whether services should be classified as competitive under Section 13-502.

The Commission Orders also acted beyond its authority and erred as a matter of law by classifying Caller-ID and Call Waiting in northeastern Illinois as competitive, in violation of Section 13-502.5(c) and (f) of the PUA. 220 ILCS 5/13-502.5(c) & (f). Its decision to classify these services as competitive was not supported by substantial evidence in the record and was erroneous.

The Commission further erred in its review of competition for packages of telephone services by failing to describe what the Commission meant by its statement finding "some level of effective competition in each package price range." This conclusion is not sufficient to allow informed judicial review, is not supported by substantial evidence in the based on the entire record of evidence, and will require reversal and/or remand to the Commission to make necessary findings or analysis. See 220 ILCS 5/10-201(e)(iii) & (vi).

The Commission's Orders further erred as a matter of law and fact in using imputation as a justification for classifying stand-alone services as competitive and for increasing the rates for those services. The Commission misapplied the imputation test as a tool to increase rates of services for which no competition exists, and then adopted an imputation test that showed that the reduced prices of services were sufficient to pass imputation. The Commission's Orders, therefore, are internally inconsistent and erroneous as a matter of law under Section 13-502 and 13-505.1 of the Act, and are not supported by substantial evidence. 220 ILCS 5/13-502, 13-505.1.

Finally, the Commission erred in rejecting the People's Application for Rehearing. The Commission erred in failing to reopen the record to take into account a recent United States District Court ruling granting Illinois Bell's request for summary judgment, and relieving IBT of its obligation to provide switching as an unbundled network element ("UNE-P") at regulated rates under Section 13-801 of the Act. 220 ILCS 5/13-801. Although the Commission Order finds that the availability of UNE-P at regulated rates was important to its finding of competition, it failed to reopen the record to consider the result of this ruling, including the increase in wholesale rates faced by UNE-P carriers, and the effect that it will have on the alternatives available to consumers. These are matters that the Commission should have considered on rehearing under Section 10-113 of the Act. 220 ILCS 5/10-113. The Commission erred by failing to consider this Order on rehearing. 220 ILCS 5/10-201(e)(ii).

All of these bases for appellate court review are set forth in the People's Application for Rehearing, filed in ICC Docket No. 06-0027 on October 2, 2006 pursuant to Section 10-113 of the PUA (220 ILCS 5/10-113), which was denied by the Commission on October 12, 2006. The People request that the Court determine the lawfulness of the Orders at issue, and request that

these Orders be reversed or remanded, and that the Court order such other relief as it deems just and proper.

The terms of the Orders are not supported by substantial evidence in the record as a whole; are beyond the authority of the Commission, are not based on the factors contained in Section 13-502 of the PUA; violate the policies and purposes specified in Article XIII of the Public Utilities Act to protect consumers in the absence of competition; and violate the PUA by, notwithstanding the lack of evidence to justify them, approving a series of rate increases for services for which consumers lack alternative providers on the theory that rate increases will make consumers of those services more profitable to potential competitors.

Attached hereto is a copy of the People's Notice of Appeal, filed with the Commission pursuant to Section 10-201(b) of the PUA, 220 ILCS 5/10-201(b), together with proof of service of the Notice of Appeal.

Dated: October 24, 2006

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS  
Lisa Madigan, Attorney General

By: 

Janice A. Dale, Chief  
Public Utilities Bureau  
Susan L. Satter  
Sr. Assistant Attorney General  
Public Utilities Division  
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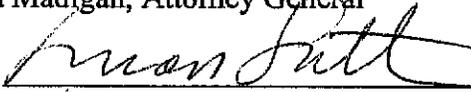
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**PROOF OF SERVICE**

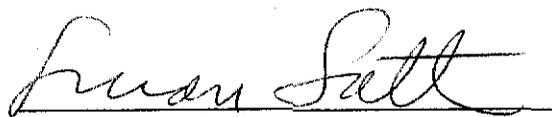
Susan L. Satter, one of the attorneys for the People of the State of Illinois, hereby certifies that on October 24, 2006, she caused three copies of each of the foregoing Notice of Filing and Petition for Review to be filed with Steven Ravid, Chief Clerk of the First District Appellate Court, 160 N. LaSalle Street, Chicago, Illinois 60601, and that she caused copies of each of the foregoing Notice of Filing and Petition for Review to be served on the persons at the addresses specified on the attached Service List by depositing such copies in the United States mail at or before 5:00 p.m., first class postage prepaid, from 100 West Randolph Street; Chicago, Illinois 60601.

A handwritten signature in cursive script, reading "Susan Satter", written over a horizontal line.

Susan L. Satter

**PROOF OF SERVICE**

Susan L. Satter, one of the attorneys for the People of the State of Illinois, hereby certifies that on October 24, 2006, she caused three copies of each of the foregoing Notice of Filing and Petition for Review to be filed with Steven Ravid, Chief Clerk of the First District Appellate Court, 160 N. LaSalle Street, Chicago, Illinois 60601, and that she caused copies of each of the foregoing Notice of Filing and Petition for Review to be served on the persons at the addresses specified on the attached Service List by depositing such copies in the United States mail at or before 5:00 p.m., first class postage prepaid, from 100 West Randolph Street; Chicago, Illinois 60601.

  
Susan L. Satter

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