

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS BELL TELEPHONE COMPANY	:	
	:	06-0719
Compliance with Order in Docket 06-0269	:	
competitive services under an	:	
alternative form of regulation.	:	

**REPLY COMMENTS OF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION**

The Staff of the Illinois Commerce Commission (“Staff”) through its attorneys respectfully submits its Reply Comments in the above-captioned proceeding.

Introduction

Other than Staff, only the People of the State of Illinois, by Lisa Madigan, Attorney General (the “AG”) filed Initial Comments. As Staff noted in its Initial Comments, while the AG has raised valid concerns, Staff finds that these issues have been satisfactorily addressed by Illinois Bell Telephone Company (“IBT” or “AT&T Illinois”) as they relate to its compliance with the 2006 Annual Filing Order. Moreover, Staff remains satisfied that the effective date of the tariff filing implementing the rate reductions is the date in which customers started receiving the benefit of these reductions as the AG (or any other party) has failed to provide any evidence that the reductions were not available to consumers. Staff would like to clarify one minor issue at the outset, however. Staff indicated that the effective date of AT&T Illinois’ filing was October 31, 2006 in its Initial Comments. However, October 31, 2006 was the filing date, while the true effective date of the filing was November 10, 2006. Staff apologizes for any confusion this may cause the reader,

while also commenting that its analysis and conclusions do not change as a result of the effective date being ten days later than indicated in its Initial Comments.

Staff's Response to AG Comments

Staff does not agree with the AG's characterization of the benefits under the 2006 Alternative Regulation Order as being "lost" between July 1, 2006 and November 10, 2006. Staff agrees that, because the classification of the packages required under Section 13-518 of the Public Utilities Act ("Consumer's Choice packages") as competitive was found to be improper, consumers in the Packages Basket did not receive the full amount of benefits in the alternative regulation plan that they were due on July 1, 2006. Nonetheless, Staff does not find that these benefits were "lost" as that would imply that customers were irreparably deprived of these benefits.

The Commission determined in Docket 06-0269¹ that there could be a potential impact on the alternative regulation plan resulting from the reclassification of certain services in Docket 06-0027.² The evidence in Docket 06-0269 led the Commission to conclude that customers were receiving sufficient benefits from the alternative regulation plan.³ At issue in Docket 06-0027 was the proper classification of not just the Consumer's Choice packages, but the entirety of IBT residential offerings in MSA-1. In Docket 06-0269, the Commission correctly indicated that refunds are "a matter governed by Section

¹ Illinois Bell Telephone Company, *Annual Rate Filing for non-competitive services under an alternative form of regulation*, ICC Docket No. 06-0269, Order (June 28, 2006) ("*06-0269 Order*").

² Investigation of specified tariffs declaring certain services to be competitive telecommunications services, ICC Docket No. 06-0027 ("*Reclassification Proceeding*").

³ See 06-0296 Order at 18.

13-502(e) of the Act, and this provision enters into our deliberations, if at all, in Docket 06-0027.” Order in 06-0269, at 18. As the Commission fully understood, benefits to customers in the alternative regulation plan would not be jeopardized due to the timing of the two dockets. Consequently, the AG’s argument that the Consumer’s Choice rates must be made retroactive to July 1, 2006 in order to comply with the Alternative Regulation Plan and Section 13-502(e) of the Act is ill-advised and without merit.

The AG also argues that, in order for the price reductions to the Consumer’s Choice packages to affect the API in the packages basket, they needed to occur on July 1, 2006. AG Initial Comments, at 3-7. Further, the AG argues that making rate changes in the API at any point after July 1 would have a negative impact on consumers and should not be allowed. *Id.*, at 4. The AG’s characterizations of how the API is calculated are simply incorrect. The Original Alternative Regulation Order describes how the PCI and API’s for the respective service baskets in the plan are to be calculated.⁴ Specifically, on page 3 of App. A to the Alt Reg Order, the Commission states that,

While the PCI may change only once each year, the API may change at any time during the year when price changes are made.

App. A to the Original Alt Reg Order, Section I.A.2.(c).

Further, on page 4 of App. A, the Commission states as follows:

Illinois Bell may decrease prices for any of its noncompetitive services. Such price decreases will be included in the calculation of the API for a basket as described in Section I.A.2.(c).

App. A to the Original Alt Reg Order, Section I.A.2.(g).

⁴ See Order in Docket 92-0448/93-0239 (Consolidated) (“Original Alt Reg Order”), October 11, 1994, Appendix A.

Accordingly, reducing the API at the time that the rate reductions to the Consumer's Choice packages occurred is consistent with the Alternative Regulation Plan. Further, the AG has failed to show how consumers are harmed by reducing the API mid-year. As a price index, its value should reflect the change in prices whenever those price changes occur. AT&T Illinois has done this on several occasions, and the annual alternative regulation filing made by the company on March 31 of each year includes an exhibit that details all of the changes to the API for each service basket that occur between each annual filing.⁵

Staff also disagrees with the AG's statement that 13-502(e) requires refunds in this case. The AG states that in the event of an improper classification, "any refunds should be refunded." AG Comments, at 4. The AG, however, ignores the fact that ordering refunds is entirely within the discretion of the Commission under Section 13-502(e). As Staff thoroughly discussed in its Initial Comments, the rate reductions instituted by AT&T Illinois on November 10, 2006 are of sufficient size as to dwarf the benefits to consumers that were not realized between July 1 and November 10 of last year. Staff cannot justify requiring AT&T Illinois to make further rate reductions under the alternative regulation plan. The API calculations made by AT&T Illinois were performed to Staff's satisfaction and show that consumers will receive more than the required benefits for the year. Accordingly, in Staff's view, the AG's statements that the Consumer's Choice rate reductions could have been left to next year's

⁵ See, for example, Exhibit 9 to Annual Rate Filing, Docket 06-0269, April 3, 2006.

calculation of the API and that these rate reductions implicitly were required to be effective on July 1, 2006 are inaccurate.

If the Commission were to agree with the AG that refunds are needed from July 1, 2006 to November 10, 2006 for Consumer's Choice customers, Staff cautions that such a refund would only be needed to the extent that the reductions lowered the API for the Packages Basket to the point where it is equal to or less than the PCI. Although Staff disagrees with the AG that such refunds are needed, Staff has calculated that the necessary refunds under such a scenario would be \$0.12 per line per month. Because the refunds would be needed for four months, the refund per line for the entirety of the July-November period would total \$0.48.

The AG also argues that consumers should receive retroactive rate reductions due to IBT's unreasonable delay in offering the reduced Consumer's Choice rates. AG Comments, at 8-9. The AG postulates that because the Order in 06-0027 approved the rates for the Consumer's Choice services on August 30, 2006 that "[t]he fact that Petitions for Rehearing were filed following the final order in Docket 06-0027 does not justify the delay in making the Consumer's Choice rates available." AG Comments at 9. The AG relies on Section 10-113 for the proposition that "Commission orders are not stayed during post-judgment proceedings." *Id.* Section 10-113 provides in relevant part that:

An application for rehearing shall not excuse any corporation or person from complying with and obeying any rule, regulation, order or decision or any requirement of any rule, regulation, order or decision of the Commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in

such cases and upon such terms as the Commission may by order direct.

The AG's general point is accurate, in that Commission orders are not stayed during post-judgment proceedings. However, the relevant Commission Order, the Commission's Order in 06-0269, expressly states that:

IT IS FURTHER ORDERED that in the event that the final order in Docket 06-0027 reclassifies any services to a non-competitive status, AT&T Illinois shall recalculate and re-submit its 2006 annual filing, within 30 days following final disposition of any applications for rehearing or within 30 days of the expiration of the time period in which applications for rehearing must be filed in Docket 06-0027; or, it will make a show cause filing that details and analyzes why such an updated 2006 annual filing is not necessary.

Order in 06-0269, Findings Paragraph (5) and in the third Ordering paragraph, at 19-20. IBT, thus, far from "inexplicably delay[ing] the filing of the [Consumer's Choice] tariffs for 10 weeks", appears to have in fact followed the express order of the Commission as contained in the *Order in 06-0269*.

Regarding the issue of potential refunds for the period November 10, 2006 going forward, and other remedial action the AG may seek, the problems identified at the AT&T call center and with ordering over the AT&T web site would appear to be issues entirely related to the reclassification docket and not relevant to any issues in front of the Commission in this proceeding. The AG has identified valid concerns and relief *may* be due potential new customers of the Consumer's Choice packages. Nonetheless, any relief these customers are entitled to would necessarily derive from the Commission's Order in 06-0027 and not from this proceeding.

Conclusion

As Staff noted in its Initial Comments, while the AG raises valid concerns, Staff finds that these issues have generally been satisfactorily addressed by AT&T Illinois as they relate to its compliance with the 2006 Annual Filing Order.

February 27, 2007

Respectfully submitted,

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STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) SS.

VERIFICATION

I, Robert Koch, on oath, states that he is employed by the Illinois Commerce Commission as a Economic Analyst in the Rates Section of the Telecommunications Division; that he is authorized to make this Verification on behalf of the Staff of the Illinois Commerce Commission; that he has read the foregoing Staff Reply Comments, and is familiar with the contents thereof; and that the matters set forth in the attached Staff Reply Comments are true and correct to the best of his knowledge, information and belief.

Robert Koch
Name

Subscribed and sworn before me
This 27th day of February, 2007

Lisa Bowman
Notary Public

