

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Illinois Bell Telephone Company	:	
	:	
Investigation of specified tariffs declaring	:	08-0569
certain services to be competitive	:	
telecommunications services	:	
	:	
	:	

**REPLY BRIEF ON EXCEPTIONS  
OF THE PEOPLE OF THE STATE OF ILLINOIS**

Susan L. Satter  
Senior Assistant Attorney General  
100 West Randolph Street  
11<sup>th</sup> Floor  
Chicago, Illinois 60601  
(312) 814-1104  
Jdale@atg.state.il.us  
[SSatter@atg.state.il.us](mailto:SSatter@atg.state.il.us)

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MATERIAL TREATED AS CONFIDENTIAL PURSUANT TO DESIGNATIONS BY ILLINOIS BELL TELEPHONE COMPANY, STAFF AND OTHER PARTIES HAS BEEN REMOVED AND ITS LOCATIONS IS SET OFF WITH ASTERISKS PURSUANT TO THE PROTECTIVE ORDER [\*\*\*] AND HIGHLIGHTED IN GRAY.

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The People of the State of Illinois, by Attorney General Lisa Madigan, file this Reply Brief on Exceptions in response to the Briefs on Exceptions (BOE) filed by Illinois Bell Telephone Company and the Staff of the Illinois Commerce Commission. For the reasons set out below, the People request that the Commission adopt the Proposed Order issued by the Administrative Law Judge on April 23, 2009 (“Proposed Order”), order Illinois Bell Telephone Company (“Illinois Bell” or “the Company”) to return the residential services identified in Schedule B to the Proposed Order<sup>1</sup> to the non-competitive classification, and reject Illinois Bell’s price increase proposal for the network access line and bands A and B local usage.

## **I. Introduction**

Illinois Bell and Staff except to the Proposed Order because it is not the same as the Order entered by the Commission in Docket 06-0027, but their exceptions should be rejected. The Commission should look to the facts presented for the Greater Illinois LATA in this docket, the changes that have occurred over the last few years, and the changes that were expected to occur but did not. Most fundamentally, the Commission should adopt the Proposed Order because it properly classifies services for which there are no alternatives as non-competitive. This conclusion is required by Section 13-502, which permits a competitive classification “only if, and only to the extent that, for some identifiable class or group of customers in an exchange, group of exchanges, or some

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<sup>1</sup> The services listed in Appendix B are: The listed services are: Residence Network Access Lines; Residence Band A and Band B usage; Customer Calling Services (Call Waiting, Caller ID, Caller ID with Name, and Talking Call Waiting) (“Call Waiting and Caller ID”); Alphabetical Directory Listings – Extra listings, Private listings, and semi-private listings (“Directory Listings”); Minutes of Use Printed Details; Non-sufficient Funds Check Charge; Consumers’ Choice Basic.

other clearly defined geographical area, such service, or its functional equivalent, or a substitute service, is reasonably available from more than one provider” and requires the Commission to consider five factors, including whether the service is “readily available in the relevant market at comparable rates, terms, and conditions” in determining the proper classification. There are no landline providers of measured and *a la carte* services other than Illinois Bell, and the wireless and VoIP carriers cited by Illinois Bell do not provide equivalent or substitute services at comparable rates, terms, and conditions. The Proposed Order correctly applies Section 13-502 and is consistent with the policies of the Universal Telephone Service Protection Law. 220 ILCS 5/13-103.

There are also significant differences between this docket and Docket 06-0027. For example (1) the state and the country are now in the midst of a severe economic downturn, leaving consumers more vulnerable and sensitive to price increases; (2) customers are paying more for basic service, and have not moved to the safe harbor packages, which were offered as a protection against price increases; (3) the price increases occurring in the Chicago LATA have not resulted in the appearance of competition for measured and *a la carte* services; (4) the competitive classification in the Chicago LATA has resulted in widespread price increases, some as high as 178% (the prices for call waiting, caller-ID, directory listings, and late fees all increased significantly)<sup>2</sup> demonstrating Illinois Bell’s unconstrained exercise of market power; and (5) the Citizens Utility Board opposes the competitive classification of measured and *a la carte* services in the Greater Illinois LATAs and finds the Company’s customer information commitments inadequate.

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<sup>2</sup> See People’s Initial Brief at page 23.

In summary, the arguments of both Illinois Bell and the Staff boil down to this: the Commission allowed the reclassification of measured and *a la carte* services in the Chicago LATA, and it should do so again here. That is not a substantive argument, and does not overcome the essential fact that no other carrier offers measured and *a la carte* services or a substitute service at comparable rates, terms, and conditions. The Proposed Order correctly applied the law and should be adopted by the Commission.

**II. Both Illinois Bell and Staff Ignore The Freedom The Commission Has To Rule On Issues Coming Before It Irrespective Of Past Decisions.**

It is well established that the Commission is free to make decisions based on the evidence presented, and that as a regulatory body, it is entitled to assess each matter that comes before it without being bound by prior decisions. The Illinois Appellate Court recently summarized the rule as follows:

“Commission orders have no *res judicata* effect in subsequent proceedings. Lakehead Pipeline Co. v. Illinois Commerce Commission, 296 Ill.App.3d 942, 956, 231 Ill.Dec. 353, 696 N.E.2d 345, 354. This is true because the Commission is not a judicial body, but a regulatory body, and as such it must have the authority to address each matter before it freely, even if the matter involves issues identical to a previous case. Lakehead Pipeline, 296 Ill.App.3d at 956, 231 Ill.Dec. 353, 696 N.E.2d at 354-55.

Illinois American Water Co. v. Illinois Commerce Commission, 322 Ill.App.3d 365, 368, 751 N.E.2d 48, 52 (3d Dist. 2001). This rule allows the Commission to assess each case as it comes before it, “even if the matter involves issues identical to a previous case.” Id.

Both Illinois Bell and Staff argue that the Commission’s Order in Docket 06-0027 should bind the Commission to the same result in this docket. AT&T IL BOE at 1-5, 11-

18; Staff BOE, Exc. 5. Bell asserts that the Docket 06-0027 Order involved policy issues, and that those policy decisions should control this docket. However, policy questions are precisely the types of issues that the Commission is free to revisit. When the effects of a policy produce results other than those regulators intended, regulators not only can, but should revisit that policy.

**A. The Effects of the Recent Chicago LATA Rate Increases Have Not Promoted Competition Or Protected Consumers.**

The passage of time has enabled the parties to test the policies adopted in the Docket 06-0027 Order. The evidence shows that despite the Commission's expectation that rate increases allowed in the Docket 06-0027 Order would lead to more choices for consumers, no carrier offers alternatives to measured and *a la carte* services in either the Chicago LATA or the Greater Illinois LATAs. ATT IL Ex. 2.0 at 24; AG Ex. 1.0 at 11; Staff Ex. 1.0 at 44-46. The lack of alternatives to measured service and other *a la carte* services is further demonstrated by the number of customers who continue to subscribe to those services in the Chicago LATA despite significant price increases ranging from 30% to 175%. See People's Initial Brief at 22-24 and *infra* at pages 8-9.

Consumers in the Chicago LATA have paid Illinois Bell \$55.8 million more than they would have paid at October, 2006 rates for identical service (using demand as of December 31, 2007 and excluding the higher priced Select Feature package), and \$73.1 million more when that plan is substituted for the grandfathered uSelect3 package. AG Ex. 3.0 at 26-27. Based on the Company's June 30, 2008 subscription levels, the March, 2009 increases in Caller-ID and Call Waiting prices would extract an additional \$5.2 million from consumers, and bring the total revenue shifted from residential consumers to the Company to \$78.3 million. ATT Ex. 1.2 at 15.

In the Greater Illinois LATAs, consumers will pay \$13.9 million more for telephone service based on July 31, 2008 demand and the increases that have already occurred in the Chicago LATA. AG Ex. 1.0 at 9. This includes \$3.2 million<sup>3</sup> per year for increases in measured service rates, but does not reflect the loss of approximately \$1.9 million in annual rate reductions under alternative regulation. Staff Ex. 2.0 at 10. At present levels of demand over the next three years and assuming rate increases no higher than those in the Chicago LATA as of November, 2008, consumers can expect to pay rate increases of between \$28 and \$35 million and lose about \$5.7 million due to lost rate reductions.<sup>4</sup> AG Ex. 1.0 at 10. This is equivalent to transferring between \$33.7 million and \$42.7 million from consumers in Rockford, Davenport, Peoria, Champaign, Springfield and East St. Louis to Illinois Bell for exactly the same services over the next three years.

Notwithstanding the assumption that allowing increases in measured and *a la carte* service prices would make basic service customers “more attractive” to competitors (Docket 06-0027, Order at 96), the evidence to date shows that in fact competitors are not targeting this segment of the market notwithstanding the “increase in revenue opportunities available from these customers.” *Id.* The Proposed Order properly rejects this premise, and reaches the common sense conclusion that where there are no competitors for a given service, that service is non-competitive.

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<sup>3</sup> See People’s Initial Brief at 4.

<sup>4</sup> The \$5.7 million in foregone rate reductions is based on Staff’s calculation of about \$1.9 million in lost reductions per year times 3.

**B. The Safe Harbor Packages Have Not Been Effective In Sheltering Consumers From Increased Prices For Measured and *A La Carte* Services.**

In the Docket 06-0027 Order, the Commission said it “obviously has a great interest in maximizing the savings for consumers under the Joint Proposal. The Commission stated its belief that the actual customer savings in the future depend primarily on the number of measured service customers switching to one of the three packages.” Order at 97. To monitor whether this intent was realized, it ordered that Bell provide subscription reports, showing the number of customers subscribing to each of its services.

The June 30, 2008 subscription report, which was the last report produced in the record, shows the number of consumers who continue to pay the increased network access line charge and the number who have subscribed to the Consumer Choice packages in the Chicago LATA as of that date. Of the \*\*\* [REDACTED] \*\*\* customers who paid the network access line charge when the first subscription report was produced (December 31, 2006), \*\*\* [REDACTED] \*\*\* continued to take that service on June 30, 2008. See AG Ex. 2.0 at 5. The **combined total** of all Consumers Choice subscribers in the Chicago LATA was \*\*\* [REDACTED] \*\*\* of the total Illinois Bell lines as of June 30, 2008.<sup>5</sup> In the Chicago LATA, the breakdown among the plans shows that the smallest number of customers went to Consumers Choice Basic \*\*\* [REDACTED] \*\*\* which was intended to protect the substantial number of consumers who make fewer than 40 calls per month from the \$3.00 increase in the network access line charge instituted since the Docket 06-0027 Order. The next smallest group went to

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<sup>5</sup> The ALJ took administrative notice of the competition reports Illinois Bell filed in Docket 06-0027, and the Illinois Bell total line count is taken from that document.

Consumers Choice Plus \*\*\* [REDACTED] \*\*\* which has unlimited local calling plus two features. The largest group went to Consumers Choice Extra, \*\*\* [REDACTED] \*\*\* which includes the line and unlimited calling, although only a small percentage of measured service customers make more than the 100 calls necessary to benefit from this rate, even after the increases allowed in the Chicago LATA.

Similarly, the largest group of customers in the Greater Illinois LATAs went to the Consumers Choice Plus (a line and unlimited local calling) \*\*\* [REDACTED] \*\*\* despite the fact that fewer than \*\*\* [REDACTED] \*\*\* in each LATA make enough calls (344 without applying the volume discount) at \$0.0203 per call to justify the implied \$7.00 usage charge in the Greater Illinois area. See ATT IL Ex. 6.0, Sch. 6.3 Confidential.

According to Staff witness Dr. Liu, 90% of Greater Illinois LATA basic service customers make fewer than 90 calls per month.<sup>6</sup> Staff Ex. 1.0 at 43. The evidence in this docket demonstrates that the “safe harbor” packages have not satisfied the Commission’s “great interest in maximizing the savings for consumers under the Joint Proposal.”

Docket 06-0027, Order at 97.

Similarly, a majority of customers subscribing to *a la carte* vertical features have continued to subscribe to them notwithstanding substantial price increases. The Subscription Reports show that \*\*\* [REDACTED] \*\*\* of Chicago LATA residential customers are continuing to pay the higher prices for stand-alone Caller-ID and Call Waiting, rather than switch to the Consumers Choice Plus or any other

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<sup>6</sup> Staff witness Dr. Lui testified that 90% of measured service customers make 90 or fewer calls per month, and 70% make 75 or fewer calls per month. Staff Ex 1.0 at 43.

package.<sup>7</sup> Clearly, more Chicago LATA customers are paying the higher basic service and *a la carte* features charges for identical services than are switching to the Consumers Choice plans or finding competitive alternatives.

The proportion of customers on the Consumer Choice packages is disappointingly low, calling into question the assumption that those rates would provide consumers a “safe harbor” from the rate increases occasioned by the “competitive” classification. When the expectations embedded in an Order are disappointed, it is only prudent to revisit the assumptions disproved and policy goals not realized.

**C. Section 13-502 Authorizes The Commission To Consider The Current Economic Downturn In Assessing The Public Interest And Implementing The Important Legislative Policy Promoting And Protecting Affordable Telephone Service.**

Since the Docket 06-0027 Order, Illinois and the nation have experienced a severe economic downturn running from Wall Street to homes throughout the country where foreclosures and job losses are on the rise. See Proposed Order at 97 and fn. 1. The Commission should reject Illinois Bell’s argument that the Commission ignore these economic realities. ATT IL BOE at 10. On the contrary, in a time of widely reported and discussed economic difficulty, the notion of dramatically increasing prices for services that are only provided by Illinois Bell should be anathema to a Commission charged with promoting affordable service and protecting consumers from the exercise of market power. The Proposed Order properly considered this public interest in maintaining low-priced measured and a la carte services when no competition for such services was identified.

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<sup>7</sup> \*\*\* [REDACTED] \*\*\*

In arguing against consideration of the economic downturn, Illinois Bell both assumes that there is in fact competition for services that the evidence shows are only offered by Illinois Bell on *a la carte* basis and interprets Section 13-502 to effectively ignore the terms of subsection (c). ATT IL BOE at 9-12. Bell improperly assumes that there are competitive alternatives to *a la carte* services, when that is the very question before the Commission. See ATT IL BOE at 10. Its further argument that the Commission must classify a service as competitive solely on the basis of whether a service has a functional substitute is just wrong. If the General Assembly had meant to limit the Commission's classification decision to whether there were functionally equivalent services available, it would have stopped at subsection (b) of Section 13-502. Instead, it codified five additional factors to be considered in subsection (c), which include whether the service is available at "comparable rates, terms, and conditions," and whether a competitive classification is in the public interest. 220 ILCS 5/13-502(c)(2) & (5). Illinois Bell's argument to ignore these factors violates the basic tenet of statutory construction that a statute must be read as a whole, and no word or phrase ignored.

Illinois courts have consistently stated that "[i]n ascertaining the legislature's intent, courts begin by examining the language of the statute, reading the statute as a whole, and construing it *so that no word or phrase is rendered meaningless or superfluous.*" Ming Auto Body/Ming of Decatur v. Industrial Commission, 387 Ill. App.3d 244, 253 (2008), citing Kraft, Inc. v. Edgar, 138 Ill.2d 178, 189 (1990)(italics added). The Proposed Order properly found that the Commission cannot stop at whether services are "functionally equivalent." Rather, once that prerequisite is met, the Commission must consider the other factors specified by the General Assembly, in light

of the purposes of the Act, to determine whether a competitive classification is acceptable. Proposed Order at 91. Illinois Bell's argument that the Commission can ignore the provisions of Section 13-502(c), in particular, the provisions that the Commission consider whether services are offered at comparable rates, terms, and conditions and the public interest, would render those provisions "meaningless or superfluous" and thus violates basic rules of statutory construction.

The Commission should assess the public interest within the context and purpose of Article XIII of the Public Utilities Act. Illinois Power Co. v. Illinois Commerce Com'n, 111 Ill.2d 505, 511 (1986) (reversed on other grounds). In enacting the Universal Telephone Service Protection Act, the General Assembly expressly found that "universally available and widely affordable telecommunications services are essential to the health, welfare, and prosperity of all Illinois citizens." 220 ILCS 5/13-102(a). Similarly, the policy of this state that governs the application of the Act, is that: "telecommunications services should be available to all Illinois citizens at just, reasonable, and affordable rates and that such services should be provided as widely and economically as possible in sufficient variety, quality, quantity and reliability to satisfy the public interest." 220 ILCS 5/13-103(a). The public interest in protecting affordable and economical service is especially acute today. When no carriers offer services at prices and on terms and conditions matching that of the ILEC, services should not be classified as competitive and consumers should not be subject to repeated, substantial rate increases in order to increase revenue opportunities for either Illinois Bell or other potential carriers.

As noted in the Proposed Order, the survey of local measured service customers requested by the Commission in Docket 06-0027, and filed on e-docket by Illinois Bell on March 1, 2007, confirms that a larger portion of older and lower income customers subscribe to measured service. This emphasizes the need to protect the rates paid by these more vulnerable segments of the population, notwithstanding that other consumers might also benefit from these reasonable rates.

Illinois Bell contends that the Proposed Order improperly referenced the survey produced by Illinois Bell and submitted at the Commission's direction in docket 06-0027. Bell BOE at 15-16. This contention is erroneous. The Commission's rules provide that a Hearing Examiner may take administrative notice of orders, transcripts, exhibits, pleadings or any other matter contained in the record of other docketed Commission proceedings. 83 Ill. Adm. Code 200.640(a)(2). Although neither the ALJ nor the Commission needs the parties' consent to take administrative notice, the rule does provide that "parties and Staff shall be notified either before or during the hearing or otherwise of the materials noticed and shall be provided a reasonable opportunity to contest the material so noticed." Id. at 200.640(c). The Company took the opportunity to comment on the survey in its BOE, and it pointed out the information in the survey that it believed relevant. Bell BOE at 15-18.

Illinois Bell's complaints about the use of the survey and the fact that the record does not contain other evidence on the demographics of measured service customers ignore the very roadmap for review the Company claims should lead to a carbon copy of the Docket 06-0027 Order. The Commission directed the Company to produce a

demographic study in the Docket 06-0027 Order,<sup>8</sup> and Illinois Bell did so. It is unreasonable to now suggest that the Commission ignore the very study it requested. Illinois Bell is the sponsor of the study and presumably did not submit a document that it did not believe to be accurate. The Commission has the right to consider reports prepared by a party at its direction.

The lack of further demographic information is Bell's failing. The Docket 06-0027 Order expressed an interest in the demographics of measured service customers, and Illinois Bell, which bears the burden of proof, did not offer additional information on that issue. To the extent that it did offer survey data, it was free to reference it as well as portions of the report it produced and filed in response to the Proposed Order.

The Proposed Order properly notes that the Survey shows that a larger portion of older and lower income households subscribe to measured service than to more expensive package services. This conclusion amplifies the need to maintain measured service and *a la carte* services, which are not offered by other carries, as non-competitive, protected services.

### **III. The Proposed Order Properly Considered Bell's Profitability.**

Both Bell and Staff argue that the Proposed Order improperly considers Bell's profitability. ATT IL BOE at 40; Staff BOE at 16-18 (Exception No. 3). Bell would have the Commission ignore its 20% return on equity, and focus on whether measured and *a la carte* services are priced at a "competitive" rate, even if there are no competitors. However, a price cannot be assessed as "competitive" if there are no competitors offering

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<sup>8</sup> Docket 06-0027 Order at 123: "IT IS FURTHER ORDERED that AT&T is directed to undertake a statistically valid survey of its existing measured service customers to determine their demographic and usage characteristics. The results of the survey should be reported to the Commission within six weeks of the entry of this Order. Such report shall be filed with the Chief Clerk."

the same service because without competitors there is no price constraint. If, however, a company's profit or margin is insufficient, that would indicate that indeed a price is not sustainable or at a "competitive level." AG Ex. 3.0 at 12. Illinois Bell, which bears the burden on proof in this investigation<sup>9</sup> did not offer evidence showing that its profit level was insufficient or unsustainable.

The Proposed Order properly considers Bell's profitability in the context of its request to increase rates in this proceeding. The Proposed Order notes that "[i]f AT&T's continued profitability was a concern, the Commission could certainly take that into account." Proposed Order at 96. The evidence shows that Bell's operations in Illinois are quite profitable at existing rates. Bell has not shown that its rates are below a sustainable or a "competitive" level.

Staff argues that the Commission should not consider Bell's profitability because there was no evidence on the margin attributable specifically to the measured and *a la carte* services that the Proposed Order reclassifies as non-competitive. When faced with evidence of intra-state profitability, however, Bell had the opportunity to demonstrate that the services for which it seeks price increases did not produce a competitive return. Staff's argument that the Commission should infer, in the absence of evidence, that measured and *a la carte* services do not produce a reasonable return, should be rejected both because it is speculation and because it ignores Illinois Bell's obligation to produce evidence to support its position. See Staff BOE at 16.

In response to reports of Illinois Bell's profitability, the Company argued that there were errors in the profit calculation, and produced the following "adjusted" returns:

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<sup>9</sup> See 220 ILCS 5/13-502(b) ("the burden of proof as to the proper classification of any service shall rest upon the telecommunications carrier providing the service.")

Year	Return on Equity As Adjusted	Return on Intrastate Net Investment As Adjusted
2004	17.83%	14.52%
2005	21.82%	14.22%
2006	22.86%	17.26%
2007	20.40%	18.33%

ATT IL Ex. 7.0 at 9. These returns, which from 2004 to 2006 predate the competitive classification, show that Illinois Bell's prices have been producing generous returns to the Company, and cannot be considered below competitive levels, i.e. below levels that would produce a reasonable profit. AG Ex. 3.0 at 12. On the contrary, earnings at this level "could not be sustained, let alone increased, if the Company confronted any consequential price-constraining competition." Id. at 14.

The Proposed Order correctly used the evidence in the record about Bell's profitability, and Bell's and the Staff's exceptions on this issue should be disregarded.

**IV. Bell's Unhappiness With Alternative Regulation Does Not Justify Classifying Measured And A La Carte Services As Competitive When No Competition Exists For Those Services.**

Bell argues that the effect of the alternative regulation price reductions has been to push prices too low, that it is a "completely dysfunctional" plan, and that returning services (for which no competition exists) to alternative regulation would be a "disaster." ATT BOE at 30-31. Notwithstanding Bell's histrionics, in fact, the alternative regulation plan has been reasonably effective in capturing for consumers at least part of the cost savings that have been experienced in the telecommunications industry. Prices decreased while telecommunications companies were achieving significant productivity savings and inflation was low. There is nothing "dysfunctional" about a plan that recognizes that industry savings should be shared with consumers.

Notwithstanding the alternative regulation price reductions, Bell was able to realize profits of up to 33.44%, and its return on equity averaged 21% from 2000 to 2007 under alternative regulation. ATT IL Ex. 1.1 at 59. At the same time, consumers benefited in that basic service prices were kept low. That is precisely the purpose of the Universal Telephone Service Protection Act and of alternative regulation.

Now Bell wants to essentially “take-back” the savings that consumers received over 15 years of alternative regulation.<sup>10</sup> The network access line charge was never reduced despite significant cost savings, and price reductions for basic service were concentrated in the usage charge. By increasing the line charge by more than 33% over three years and increasing the usage charge by more than 70% over three year (from 2.03¢ to 3.53¢ per call), the consumer gains from alternative regulation will be essentially wiped out for basic service customers. This is not fair to consumers, particularly when the evidence is undisputed that Bell’s profits are more than generous.

Alternative regulation has not been a “disaster” for Bell, nor has it been a “disaster” for competition. Bell was given pricing flexibility within the price cap, and could price “new” services, which in almost every case were new “packages” of services, without reference to existing prices. Bell chose the price structure that exists today within the structure of the alternative regulation plan, and should not be heard to complain. Further, it is ironic that Bell expresses such concern about alternative regulation’s effect on its competition. In fact, Illinois Bell and its affiliates litigated tirelessly to eliminate the UNE provisioning method, and promoted facilities-based

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<sup>10</sup> Illinois Bell references a 33% decline in basic service revenues between 1995 and 2005 at page 15 of its BOE. All of that decline will be wiped out for measured service customers (33% increase in network access line and more than 70% increase in usage charges) and more than that decline will be lost to *a la carte* customers if the competitive classification is allowed. See pages 7-9 above.

competition. Now that the only real competition is from facilities-based companies (primarily cable companies),<sup>11</sup> the effect of alternative regulation on competition is more tenuous than ever. Facilities-based carriers have their own cost structures, and their decision to offer or not to offer a service that is comparable to measured and stand-alone service is unrelated to alternative regulation.

**V. Staff's Exception No. 1 That Some Wireless Services Are Comparably Priced To Basic Service Ignores The Variability Of Call Volume Per Month, The Value Of Free Incoming Calls, Reliable Access To E911, And The Shared Nature Of Landline Service.**

Staff's Exception No. 1 argues that the Proposed Order erred in concluding that wireless service is not available to consumers at comparable rates for the low use customer. Staff BOE at 2. Staff's first argument, however, does not support its conclusion. Staff argues that while the price structures of wireless and landline services are different, low use customers are offered alternatives at comparable prices. At the same time, Staff suggests somewhat inconsistently that the Commission ignore the prices of components of measured service, and that an assessment of alternatives can only be conducted on an individual customer basis. *Id.* at 3. This totally misses the point of *a la carte* service.

The statute requires the Commission to consider "terms and conditions" of service as well as rates. A key condition of *a la carte* service is that consumers can choose the services they want and need, and only pay for those services. It is unreasonable to expect the Commission to find that pay-as-you-go wireless service for people who make nine, three-minute calls per month on TracFone is comparable for more than 200,000 measured service customers when their calling patterns, features, and other needs vary greatly.

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<sup>11</sup> See, e.g., Staff Exhibit 1.0 at 24; ATT IL Ex. 1.0, Sch. WKW-8 Revised – Confidential, showing number of lines by carrier.

Indeed, Staff's own witness testified that 40% of measured service customers make 30 or fewer calls per month; 70% make 75 or fewer calls per month; and 90% make 90 or fewer calls per month. Staff Ex. 1.0 at 43. Clearly, there is great variation among measured service customers, and these figures do not even address the minutes of use, which are not relevant for measured service customers.

Second, even assuming that a customer who makes nine, 3-minute calls per month is representative of measured service customers (which it is not), and assuming that customers can find low cost alternatives to measured service (which they cannot), wireless service and landline service offer consumers very different non-price characteristics. The overwhelming majority of telephone subscribers use both landline and wireless telephones, indicating that they get different value from these services. Staff Ex. 1.0 at 28.

Although not mentioned in Staff's BOE, Staff witness Dr. Liu discussed the qualities of wireless service that she believes make it less than equivalent to landline service. She testified that wireless services "have fairly high trouble call reports. Voice quality or signal strength may not be of sufficiently high quality to make it comparable to wireline services. For customers that put high premium on call quality and network reliability, it would not be desirable for them to switch to these prepaid wireless services." Staff Ex. 1.0 at 47. Staff's argument that extremely low use customers may find a TracFone a comparable alternative because the cost for 27 minutes of calling per month may be low ignores its own witness's testimony that wireless service is not a reasonable substitute for landline service, regardless of whether the customer makes 9 calls or 200 calls per month.

In assessing how *a la carte* service should be classified, a key question before this Commission is whether it is good public policy to expect low-use or low-income consumers to move from the reliability and flexibility of a landline to services like TracFone because an ILEC wants to increase the price for basic services. Even if the price for 27 minutes of talk time in a given month may be reasonable on a TracFone, the consumer who dropped the landline because of price increases is also losing (1) the ability to *receive* calls at no charge; (2) untimed local calls; (3) an always-on telephone line, even the event of a power outage or a lost or broken telephone; (4) reliable access to E911 service, which will automatically display the caller's address; and (5) a single point of contact for a household. These are significant differences that help explain why so many consumers have both landline and wireless service.

Staff inexplicably ignored these differences in arguing that basic service customers should be expected to migrate from their reliable landline to TracFone, where they will be at risk of incurring substantial charges should their usage vary in any particular month. Staff's Exception No. 1 should be rejected.

**VI. Staff's Exception No. 2 That Wireless Service Is Equivalent To Measured or A La Carte Service Contradicts Its Own Witness's Testimony And Should Be Rejected As An Attempt To Replace Evidence With Counsel's Argument.**

The Proposed Order found that service packages could be classified as competitive without regard to wireless or VoIP offerings, but that measured or basic services should be classified as non-competitive. Proposed Order at 93, 95. This conclusion is consistent with Staff witness Dr. Lui's testimony. She stated:

“It is reasonable to hypothesize that wireless services are ‘good’ substitutes of wireline services for those cut-the-cord or wireless only customers.

Such claims can not be readily made for the largest customer segment – those that elect to have both wireline and wireless services.”

Staff Ex. 1.0 at 28. Dr. Lui pointed out that 21.8% of households are landline only, and 58.8% of households have both landline and wireless services, together equaling 80.6% of households. Id. Her expert opinion was that “there is the non-pricing dimension to consider when assessing the degree of substitutability of wireless and wireline services.” Id. at 29. Dr. Lui encouraged caution in including wireless services in the competitive analysis, noting that “for a significant number of customers, wireline and wireless services are not, as of yet, considered to be ‘good’ substitutes.” Id. at 30.

In connection with determining whether consumers have alternatives to measured and *a la carte* services, Dr. Lui responded to the argument that wireless pay-as-you-go services are good substitutes for measured services by saying that “these ‘low cost’ wireless alternatives may not turn out to be good substitutes for measured service” because they are not comparable in price and not comparable in composition. Id. at 47.

Without regard to its own witness’s testimony, the Staff BOE devotes 10 pages to counsel’s argument that wireless service is a substitute for landline service. Staff Exception No. 2 should be disregarded because it is not based in record evidence, and is directly contradicted by the testimony of Staff witness Dr. Lui.

**VII. Staff Exception No. 3 Ignores Record Evidence and Shows A Misunderstanding Of the Proposed Order’s Treatment Of Illinois Bell’s Profitability.**

Staff argues that the Proposed Order improperly considers Illinois Bell’s profitability. However, Staff’s argument assumes as true the very premise being considered, by arguing that it is improper to consider the profitability of services that are “properly classified as competitive.” Staff BOE at 17. The Proposed Order properly

assessed the classification of measured and *a la carte* services based on whether those services are offered by other carriers on comparable rates, terms, and conditions, and found that the competitive classification was in error because, as both the Staff and the Company witnesses agreed, no landline carrier other than Illinois Bell offers measured and *a la carte* services. Staff Ex. 1.0 at 44-47; ATT IL Ex. 2.0 at 24 (“Q. Do any of AT&T Illinois’ wireline competitors offer a stand-alone rate plan? A. Not as such.”)

Staff ignores this direct evidence of the lack of competitive alternatives, and discusses the theoretical effect of prices that are below cost, implying that the services at issue are below cost. Staff BOE at 17, 18. However, the record is undisputed that measured and *a la carte* services cover both their imputed cost and their long-run service incremental cost. ATT IL Ex. 2.0 at 38, 44 (Panfil); Staff Ex. 2.0 at 3, 7 (Chang). These are the cost standards applicable to competitive classifications. 220 ILCS 5/13-502(d) & 13-505.1 Staff’s ruminations about economic theory when prices are below cost are both irrelevant and outside the record and should be ignored.

### **VIII. Conclusion**

For the foregoing reasons, the People of the State of Illinois request that the Commission adopt the Proposed Order as written and (1) return the services identified in Appendix B to the Proposed Order<sup>12</sup> to the noncompetitive classification; (2) reject Illinois Bell’s proposal to treat those services as competitive; and (3) reject Illinois Bell’s

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<sup>12</sup> The listed services are: Residence Network Access Lines; Residence Band A and Band B usage; Customer Calling Services (Call Waiting, Caller ID, Caller ID with Name, and Talking Call Waiting) (“Call Waiting and Caller ID”); Alphabetical Directory Listings – Extra listings, Private listings, and semi-private listings (“Directory Listings”); Minutes of Use Printed Details; Non-sufficient Funds Check Charge; Consumers’ Choice Basic.

proposal to increase the network access rate by \$1.00 and the per call usage charge by \$0.005 per year for three years.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
BY LISA MADIGAN, ATTORNEY GENERAL

By: \_\_\_\_\_

Susan L. Satter  
Senior Assistant Attorney General  
100 West Randolph Street  
11<sup>th</sup> Floor  
Chicago, Illinois 60601  
(312) 814-1104  
[SSatter@atg.state.il.us](mailto:SSatter@atg.state.il.us)

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On Its Own Motion	)	
-vs-	)	ICC Docket No. 08-0569
Illinois Bell Telephone Company	)	

**NOTICE OF FILING**

Please take note that on May 14, 2009, I submitted the Confidential and Public Reply Brief on Exceptions on behalf of the People of the State of Illinois, to the Chief Clerk of the Illinois Commerce Commission at 527 East Capitol Avenue, Springfield, Illinois 62701 for filing in the above-captioned proceeding via the e-Docket system.

Date: May 14, 2009

\_\_\_\_\_  
Susan L. Satter  
Senior Assistant Attorney General

**CERTIFICATE OF SERVICE**

I, Susan L. Satter, hereby certify that the foregoing documents, together with this Notice of Filing and Certificate of Service, were sent to all parties of record listed on the attached service list by e-mail on May 14, 2009. All parties on the service list are entitled to both confidential and public documents. Paper copies will be provided upon request.

\_\_\_\_\_  
Susan L. Satter  
Senior Assistant Attorney General  
Office of Illinois Attorney General  
100 West Randolph Street, 11th Floor  
Chicago, Illinois 60601  
Telephone: (312) 814-1104  
Facsimile: (312) 814-3212  
Email: [ssatter@atg.state.il.us](mailto:ssatter@atg.state.il.us)

Service List  
ICC Docket No. 08-0569

Terrance Hilliard  
Administrative Law Judge  
Illinois Commerce Commission  
160 North La Salle Street, Suite C-800  
Chicago, Illinois 60601

Karl B. Anderson  
Corporate/Legal  
Illinois Bell Telephone Company  
225 West Randolph, Floor 25D  
Chicago, Illinois 60606

Elizabeth Davies  
Paralegal  
Citizens Utility Board  
309 West Washington Street, Suite 800  
Chicago, Illinois 60606

Matthew L. Harvey  
Office of General Counsel  
Illinois Commerce Commission  
160 North La Salle Street, Suite C-800  
Chicago, Illinois 60601

Jennifer L. Lin  
Office of General Counsel  
Illinois Commerce Commission  
160 North La Salle Street, Suite C-800  
Chicago, Illinois 60601

Stephen J. Moore  
Atty. for Comcast Phone of Illinois  
d/b/a Comcast Digital Phone  
200 West Superior Street, Suite 400  
Chicago, Illinois 60610

Erica Randall  
Paralegal  
Office of the Illinois Attorney General  
100 West Randolph Street, 11<sup>th</sup> Floor  
Chicago, Illinois 60601

Kevin D. Rhoda  
Atty. for Comcast Phone of Illinois  
d/b/a Comcast Digital Phone  
Rowland & Moore  
200 West Superior Street, Suite 400  
Chicago, Illinois 60610

Thomas Rowland  
Atty. for Comcast Phone of Illinois  
d/b/a Comcast Digital Phone  
Rowland & Moore LLP  
200 West Superior Street, Suite 400  
Chicago, Illinois 60610

Susan L. Satter  
Illinois Attorney General  
100 West Randolph Street, 11<sup>th</sup> Floor  
Chicago, Illinois 60601

Julie Soderna  
Director of Litigation  
Citizens Utility Board  
309 West Washington Street, Suite 800  
Chicago, Illinois 60606

Louise A. Sunderland  
Illinois Bell Telephone Company  
225 West Randolph Street 25D Fl  
Chicago, Illinois 60601

Christopher C. Thomas  
Sr. Policy Analyst  
Citizens Utility Board  
309 West Washington Street  
Suite 800  
Chicago, Illinois 60606

Karl Wardin  
Executive Director  
Regulatory  
Illinois Bell Telephone Company  
555 Cook Street Fl. 1E  
Springfield, Illinois 62721

James Zolnierek  
Case Manager  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62701