

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

ILLINOIS  
COMMERCE COMMISSION

2009 JUL 20 A 9 21

CHIEF CLERK'S OFFICE

ILLINOIS BELL TELEPHONE COMPANY )  
)  
)  
Annual Rate Filing for Noncompetitive )  
Services under Alternative Form of Regulation )  
)

Docket No. 09-0190

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**CLINTON A. KRISLOV'S (1) PETITION TO INTERVENE AND**  
**(2) MOTION FOR AN ADDITIONAL HEARING**

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Clinton A. Krislov, of Krislov & Associates, Ltd., hereby (1) petitions to intervene in this proceeding, pursuant to the Rules of Practice of the Illinois Commerce Commission ("Commission") 83 Ill. Admin. Code, Section 200.200, and (2) move for an additional hearing, pursuant to the Rules of Practice of the Illinois Commerce Commission ("Commission") 83 Ill. Admin. Code, Section 200.870, because the Administrative Law Judge's rulings in the 09-188 and 09-190 dockets deprived Mr. Krislov's objections from being heard, and prevented the Commission from considering whether the exhibits to Bell's Annual Rate Filing should be shielded from public scrutiny. In support of his Motion, Mr. Krislov states as follows:

1. On April 13, 2009, Mr. Krislov petitioned to intervene in Docket No. 09-0188, a related action concerning Illinois Bell Telephone Company's ("Bell") Annual Rate Filing for Noncompetitive Services under Alternative Form of Regulation, for the stated purpose of objecting to Bell seeking proprietary treatment of certain exhibits to its Annual Rate Filing. (Petition to Intervene (attached hereto as "Exhibit 1").) On April 28, 2009, his petition was granted. (April 28, 2009 Notice of Administrative Law Judge's Ruling (attached hereto as "Exhibit 2").)

2. After negotiating with Bell over its proposed protective order and reviewing the sealed exhibits, Mr. Krislov filed his Response in Opposition to Bell's Motion for a Protective

Order in this docket because Bell's April 1, 2009 motion had not established a "compelling interest" in keeping these filed documents confidential. *See Skolnick v. Alzheimer & Gray*, 191 Ill. 2d 214, 231 (2000) (holding that the presumption that all filed documents must be held open to the public applies to "all ... dockets") (quoting 705 ILCS 105/16). Bell filed its Reply on June 16, 2009.

3. On June 24, 2009, Administrative Law Judge Glennon P. Dolan ruled that he would defer judgment on Mr. Krislov's objection in the 09-188 proceeding, and address the objection "in a subsequent proceeding, 09-190." (June 24, 2009 Order of the Commission (attached hereto as "Exhibit 3"), p. 15.) However, the sole hearing in the 09-190 proceeding (which ALJ Dolan was also presiding) **had already taken place** on June 23, 2009. Thus, by deferring judgment of Mr. Krislov's objection in the 09-188 docket to the 09-190 docket, but not notifying Mr. Krislov until *after* the hearing in the 09-190 docket took place, the Administrative Law Judge's ruling prevented Mr. Krislov of a hearing on his objection.

4. More outrageous, however, is the same Administrative Law Judge's treatment (i.e., feigned ignorance) of Mr. Krislov's objection in that June 23, 2009 hearing on the 09-190 proceeding, in which the Administrative Law Judge granted Bell's motion for proprietary treatment of its Annual Rate Filing on the basis that "there [are] no objections to [Bell's] Petition":

JUDGE DOLAN: All right. Let the record reflect there are no other appearances.

This is a status for the Petition and as far as I can tell there has been no other filings by any other party concerning this Petition for confidential treatment.

Is that the understanding of the parties?

MR. HARVEY: That is correct, your Honor.

MS. SUNDERLAND: Yes, that is my understanding as well.

JUDGE DOLAN: Okay. Since there is no objections to this Petition, then I assume I'll issue an order granting the request of Illinois Bell in this matter.

Is there anything else then to come before the Commission today?

MR. HARVEY: Nothing from Staff, your Honor.

MS. SUNDERLAND: Nothing.

JUDGE DOLAN: I'll mark this matter heard and taken.

(June 23, 2009 Transcript of Proceeding (attached hereto as "Exhibit 4") at 3:16-4:14.) Thus, the Administrative Law Judge's ruling not only provided Mr. Krislov with inadequate notice that it would rule on his objection in the 09-190 docket, but then granted Bell's motion for proprietary treatment without even considering Mr. Krislov's objection.

5. With all due respect, the Administrative Law Judge's role is not merely to rubber stamp Bell's requests. Even without other participants, the Administrative Law Judge should have required Bell to identify those specific provisions entitled to confidentiality, determine the appropriateness of Bell's designations, and protect *only* those limited provisions from disclosure.

6. On June 25, 2009, Mr. Krislov's counsel, M. Reas Bowman, saw that the Administrative Law Judge had deferred judgment on Mr. Krislov's objection to the 09-190 proceeding, and, only then discovering that a hearing in the 09-190 had already taken place on June 23, 2009, immediately called and then e-mailed the Commission's staff attorney, Matthew Harvey, to inquire about the June 23, 2009 hearing. (June 25, 2009 Email from R. Bowman to M. Harvey (attached hereto as "Exhibit 5").) Mr. Harvey never responded to Mr. Bowman's phone calls or e-mail.

7. Therefore, the Administrative Law Judge's inappropriate treatment of Mr. Krislov's objection deprived the Commission from considering his objection in any manner. The

only procedure for Mr. Krislov's objection to now be heard is by granting Mr. Krislov's petition in this proceeding, and then ordering an additional hearing to hear his objection.

8. Section 200.870 provides that any party may request that the Hearing Examiner hold an additional hearing after the Administrative Law Judge marks a proceeding "heard and taken," but before the Commission has issued a final order. Thus, since the Administrative Law Judge marked the 09-190 proceeding as "heard and taken" on June 23, 2009, and the Commission has not entered a final order, the Hearing Examiner can order an additional hearing on Mr. Krislov's already-briefed objection. Additionally, good cause for this additional hearing is shown by the Administrative Law Judge's treatment of Mr. Krislov's objection, which prevented the Commission from considering the objection or making an informed decision on the proprietary treatment of Bell's Annual Rate Filing exhibits.

9. Intervention is required because no other party to this action will adequately represent Mr. Krislov's or the public's interests in open proceedings, and as of this date of filing, no other party will represent the interests of any other Bell customer. Mr. Krislov will accept service by electronic means as provided in the Commission's Rules of Practice, 83 Ill. Admin. Code Section 200.1050.

WHEREFORE, for the above-stated reasons, Mr. Krislov's petition to intervene should be granted, and the Hearing Examiner should order another hearing in the 09-190 docket to hear Mr. Krislov's objection to Bell's motion for proprietary treatment.

Dated: July 17, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Reas Bowman", is written over a solid horizontal line.

Clinton A. Krislov  
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**CERTIFICATE OF SERVICE**

I, M. Reas Bowman, hereby certify that I caused a copy of the foregoing Petition to

Intervene and Motion for an Additional Hearing to be served on:

Glennon P. Dolan  
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Louise A. Sunderland  
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by causing a copy of said document to be delivered via email on July 17, 2009.



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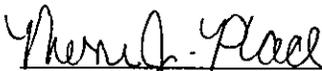
STATE OF ILLINOIS     )  
                                  )  
COUNTY OF COOK     )     SS

**VERIFICATION**

Clinton A. Krislov, an attorney, on oath, states that he has read the foregoing Petition to Intervene and is familiar with its contents, and that the matters set forth in the Petition to Intervene are true to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Clinton A. Krislov

Subscribed and sworn before me  
this 17<sup>th</sup> day of July, 2009.

  
\_\_\_\_\_  
Notary Public

"OFFICIAL SEAL"  
MERRI J. PLACE  
Notary Public, State of Illinois  
My Commission Expires 02/08/2010



**OFFICIAL FILE**  
**ILLINOIS COMMERCE COMMISSION**

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

**ORIGINAL**

ILLINOIS  
COMMERCE COMMISSION

ILLINOIS BELL TELEPHONE COMPANY )  
)  
)  
Annual Rate Filing for Noncompetitive )  
Services under Alternative Form of Regulation )  
)

2009 APR 13 A 9:42  
Docket No. 09-0188  
CHIEF CLERK'S OFFICE

**PETITION TO INTERVENE**

Clinton A. Krislov, of Krislov & Associates, Ltd., hereby petitions to intervene in the above captioned proceeding, pursuant to the Rules of Practice of the Illinois Commerce Commission ("Commission"), 83 Ill. Admin. Code, Section 200.200. In support of his Petition, Mr. Krislov states as follows:

1. Mr. Krislov is an Illinois resident, a customer of Illinois Bell Telephone Company d/b/a AT&T Illinois ("Bell"), and Class Counsel in *In re Illinois Bell Telephone Link-Up II and Late Charge Litigation* (Ill. Cir. Ct. No. 05 CH 013088), a dispute regarding Bell's mailing practices and late payment charges Bell collected from customers.

2. On April 1, 2009, Bell filed its Annual Rate Filing for Noncompetitive Services under an Alternative Form of Regulation ("Annual Rate Filing"), moving that same day for a protective order barring public disclosure of certain information contained in the report, including "detailed revenue data." (Bell's Motion for Protective Order (April 1, 2009), p. 1.)

3. Bell's desire to keep portions of its Annual Rate Filing concealed runs counter to the Illinois General Assembly's clearly articulated policy of public disclosure for these proceedings, pursuant to 220 ILCS 5/9-102:

Every public utility shall file with the Commission and shall print and keep open to public inspection schedules showing all rates and other charges, and classifications, which are in force at the time for any product or commodity furnished or to be furnished by it, or for any service performed by it, or for any service in connection therewith, or

performed by any public utility controlled or operated by it.

4. Specifically, Bell's April 1, 2009 Motion for Protective Order does not sufficiently explain in any detail, let alone give a legitimate reason, why certain exhibits should be kept from public disclosure, pursuant to the Public Utilities Act, 220 ILCS 5/4-404, or pursuant to the Commissions Rules of Practice, 83 Ill. Admin. Code 200.430. The effect of sealing these documents from public view is antithetical to this Commission's purpose and has a pernicious effect. *See, e.g., Citizens Utility Bd. v. Illinois Commerce Com'n*, 275 Ill. App. 3d 329, 341 (1st Dist. 1995) (Appellate Court reversed Commission's confidential treatment of portions of utility's rate filing because "the public cannot intelligently determine whether or not Edison has engaged in price discrimination or other unfair practices. (220 ILCS 5/9-241.) Indeed, it is impossible to verify whether Edison has granted a particular customer any unreasonable preferences or advantages under Rate CS since the actual charges, and the supporting papers used in calculating those charges, will be insulated from public scrutiny.").

5. Indeed, Bell recently used this Commission's acquiescence to concealment as a substantive determination on the merits that its total and itemized revenues were determined to be confidential as proprietary financial data. In the *In re Illinois Bell Telephone Link-Up II and Late Charge Litigation* case, before the Chancery Court, Bell argued that the revenues it received from late payment charges were submitted to the Commission in Bell's annual rate filing "as confidential and [Bell] requested proprietary treatment of the information, and the ICC explicitly granted this request, ordering that the information be designated proprietary pursuant to 220 ILCS section 5/404." (Bell's Motion to Confirm Confidential Designation of Non-Public Financial Information, p. 3 (attached hereto as "Exhibit 1 ").)

6. Bell's concealment of these revenues blocks the Commission's **public** determination of whether Bell's rates are reasonable, which is directly tied to Bell's revenues and operating profits. *See Cerro Copper Products v. Illinois Commerce Commission*, 83 Ill.2d 364, 371 (1980) (noting that the "fundamental purpose" of a utility providing a rate schedule is to determine whether the rate of return for the utility is reasonable).

7. Therefore, no basis exists for keeping private those portions of Bell's rate filing that disclose its revenue and late payment charges collected during any previous year, which is of particular concern to the citizens of Illinois because their telephone rates are directly tied to Bell's revenue and operating profits set forth in the Annual Rate Filing.

8. Nor are any revenue figures proprietary in any way. These amounts reveal nothing that is entitled to be kept secret; and while competitors may desire to know this information, consumers have a bona fide interest in knowing the contents of Bell's Annual Rate Filing, which "binds both the utility and the customer and governs their relationship." *Adams v. Northern Illinois Gas Co.*, 211 Ill.2d 32, 55 (2004) (citing *Danisco Ingredients USA, Inc. v. Kansas City Power & Light Co.*, 267 Kan. 760, 765 (1999)).

9. Nor should this information be concealed from competitors, either. If indeed some other company is willing to charge consumers less than Bell's secret charges, the competitor should have that data for legitimate consumer-benefitting reasons.

10. Mr. Krislov, as a utility consumer, Bell customer, and Class Counsel, will be affected by any order the Commission enters regarding Bell's Annual Rate Filing, including the Commission's decision of whether to publicly disclose its contents. Accordingly, Mr. Krislov is sufficiently interested in this proceeding.

11. No other party to this action will adequately represent Mr. Krislov's interests, and

as of this date of filing, no other party will represent the interests of any other Bell customer.

12. Mr. Krislov will accept service by electronic means as provided in the Commission's Rules of Practice, 83 Ill. Admin. Code Section 200.1050.

13. If this Petition to Intervene is granted, please add the following persons to the official service list for this proceeding:

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WHEREFORE, for the above-stated reasons, the Proposed Intervenor respectfully requests that the Commission grant this Petition to Intervene, and that Clinton A. Krislov be made a party to the above-captioned proceeding.

Respectfully submitted,



Clinton A. Krislov  
M. Reas Bowman  
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20 N. Wacker Drive, Suite 1350  
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Firm No. 91198

STATE OF ILLINOIS     )  
                                  )  
COUNTY OF COOK     )     SS

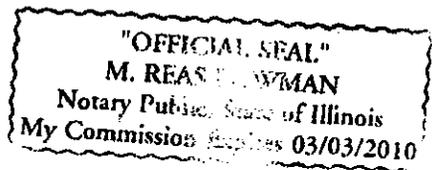
**VERIFICATION**

Clinton A. Krislov, an attorney, on oath, states that he has read the foregoing Petition to Intervene and is familiar with its contents, and that the matters set forth in the Petition to Intervene are true to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Clinton A. Krislov

Subscribed and sworn before me  
this 10<sup>th</sup> day of April, 2009.

  
\_\_\_\_\_  
Notary Public



**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing Petition to Intervene to be served on:

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by causing a copy of said document to be delivered via email on April 10, 2009

  
M. Reas Bowman

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Firm ID No.: 91198

**Exhibit 2**



ILLINOIS COMMERCE COMMISSION

April 28, 2009

Illinois Bell Telephone Company	:	09-0188
	:	
Illinois Bell Telephone Company's	:	
Annual Rate Filing for Noncompetitive	:	<b>SERVED ELECTRONICALLY</b>
Services under an Alternative Form	:	
of Regulation.	:	

NOTICE OF ADMINISTRATIVE LAW JUDGE'S RULING

TO ALL PARTIES OF INTEREST:

Notice is hereby given by the Administrative Law Judge that the Petition to Intervene filed by Clinton A. Krislov is granted.

Sincerely,

Elizabeth A. Rolando  
Chief Clerk

EAR:ikb  
Administrative Law Judge Dolan

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company :  
 :  
 :  
 Illinois Bell Telephone Company's : 09-0188  
 Annual Rate Filing for Noncompetitive :  
 Services under an Alternative Form :  
 of Regulation. :  
 :

ORDER

By the Commission:

**I. PROCEDURAL BACKGROUND**

On October 11, 1994, the Illinois Commerce Commission ("Commission") entered its Final Order in Dockets 92-0448/93-0239 (Consol.) ("*Alt Reg Order*") wherein, and pursuant to Section 13-506.1 of the Public Utilities Act ("Act"), it established an alternative form of regulation for the noncompetitive services of Illinois Bell Telephone Company ("AT&T Illinois" or "the Company"). Generally referred to as "price cap regulation," this alternative form of regulation ties rates for noncompetitive services to an inflation and productivity-based index and, thereby, supplants traditional rate case regulation with a more streamlined process by which price changes can be approved. Under the terms of the alternative regulation plan established for AT&T Illinois ("Plan") the Company is required to make an annual filing that, *inter alia*, sets out for Commission approval, a Price Cap Index ("PCI") to be effective on July 1st of the same year.

On April 1, 2009, AT&T Illinois submitted its fifteenth Annual Rate Filing in compliance with the *Alt Reg Order*. The Commission takes administrative notice of the orders and records in Dockets 92-0448/93-0239 (the *Alt Reg* proceeding), Docket 95-0182 (the first Annual Filing), Docket 96-0172 (the second Annual Filing), Docket 97-0157 (the third Annual Filing), Docket 98-0259 (the fourth Annual Filing), Docket 99-0185 (the fifth Annual Filing), Docket 00-0260 (the sixth Annual Filing), Docket 01-0302 (the seventh Annual Filing), Docket 02-0240 (the eighth Annual Filing), Docket 03-0217 (the ninth Annual Filing); Docket 04-0312 (the tenth Annual Filing); Docket 05-0231 (the eleventh Annual Filing); Docket 06-0629 (the twelfth Annual Filing); Docket 07-0234 (the thirteenth Annual Filing) and Docket 08-0249 ( the fourteenth Annual filing).

In this proceeding, the People of the State of Illinois ("AG") and Clinton A. Krislov filed Petitions to Intervene. These petitions were granted. The Staff of the Commission ("Staff") took an active role in this proceeding.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, a hearing was held before duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Chicago, Illinois on April 23, 2009. At the hearing, the ALJ established a schedule for discovery, the filing of initial and reply comments, briefs and exceptions. No subsequent hearings were held in this matter, in accordance with the Commission's practice for these proceedings in previous years.

Comments on the 2009 Annual Rate Filing were filed by Staff and the AG. Thereafter, Reply Comments were provided by AT&T Illinois and Staff. The record was marked "Heard and Taken" on May 28, 2009.

The ALJ's Proposed Order was served on the parties on May 28, 2009.

## II. REGULATORY REQUIREMENTS

### A. The Basics

Under terms of the *Alt Reg Order*, most of AT&T Illinois' noncompetitive services were separated and placed into four distinct customer groups or service baskets. These were designated as follows: 1) Residential Basket, 2) Business Basket, 3) Carrier Access Basket, and 4) Other Services Basket. According to the Plan, the prices for the services within each of these baskets are allowed to fluctuate over time, with the restriction that each basket's Actual Price Index ("API") should never exceed the PCI. The PCI is primarily based upon inflation, but includes offsets for productivity, the Company's quality of service and exogenous factors that are beyond the control of the Company.

At the outset of the Plan, the PCI was set equal to 100. Pursuant to the Commission's Order, the PCI must be recalculated once each year according to the following formula:

$$PCI_t = PCI_{t-1} [1 + (\% \text{ change in the GDPPI})/100 - .043 + Z + Q]$$

where:

PCI <sub>t</sub>	= price cap index for current year,
PCI <sub>t-1</sub>	= price cap index for previous year,
GDPPI	= Gross Domestic Product Price Index ("GDPPI"),
Z	= exogenous change factor, and
Q	= quality of service component, which is negative.

Similarly, the API of each of the service baskets was set equal to 100 at the outset of the plan. Each basket's API reflects the basket's average price, with demand and any proposed tariff changes properly accounted for. The API may change at any time during the year when price changes are made. Alt Reg Order, Appendix A at 3. The API for an individual basket is calculated as follows:

$$API_t = API_{t-1} * \sum_{i=1}^n v_i \frac{P_i(t)}{P_i(t-1)}$$

where:

- $API_t$  = actual price index for the current year,  
 $API_{t-1}$  = actual price index for the previous year,  
 $i$  = rate element  $i$ ,  
 $P_i(t)$  = proposed price for the  $i_{th}$  element,  
 $P_i(t-1)$  = current price for the  $i_{th}$  element, and  
 $v_i$  = revenue weight for the  $i_{th}$  element.

As described in the *Alt Reg Order*, "the reasonableness of price changes under the plan is determined by a comparison of the PCI applicable to a given year and the API for each of the four customer categories." *Alt Reg Order*, Appendix A at 3. Specifically, each basket's API must be less than or equal to the PCI at all times. This requirement has implicitly placed the emphasis of the Company's annual filings on the calculation of the PCI and the justification of each of its inputs. In addition to determining whether the baskets' APIs are less than the PCI, the Commission must also ensure that any proposed tariff changes are consistent with the requirements of the Act, including Sections 13-505.1 and 13-507. 220 ILCS 5/13-505.1; 5/13-507.

## B. Directives for the Annual Filing

In order to develop a record that can be used to determine whether it should approve the Company's annual rate filings, with or without modifications, the Commission established a very specific set of filing requirements. In its *Alt Reg Order*, the Commission stated that:

Illinois Bell shall be required to make an annual rate filing no later than April 1 of each year of the plan after 1994. At that time, Illinois Bell shall provide the following information:

- (a) the price cap index for the following 12-month period (July to June), with supporting data showing the GDPPI for the previous calendar year and the percent GDPPI change for that 12-month period;
- (b) the actual price index ("API") for each service basket, including the effects of proposed rate changes under the price cap index for the following 12-month period (July to June) and adjustments for new services added, existing services withdrawn, and services reclassified as competitive or noncompetitive;

- (c) tariff pages to reflect revised rates;
- (d) supporting documentation demonstrating that any proposed rate changes are consistent with the requirements of the price index mechanism;
- (e) a demonstration that Illinois Bell would be in compliance with Sections 13-507 and 13-505.1 of the Act if the proposed rate changes went into effect;
- (f) an identification of any changes to the GDPPI weights and an assessment of the effects of such changes, and any necessary modifications to the PCI;
- (g) the current data showing the calculation of Z for the previous calendar year, with the effects causing Z to change identified and described;
- (h) the current data showing the calculation of Q for the previous calendar year, with the events causing Q to change identified and described. *Alt Reg Order* at 92.

Furthermore, the Commission stated that its Staff, and "all of the interested parties will have an opportunity to file written comments in response to each annual filing" and that AT&T Illinois will have "an opportunity to file reply comments." *Id.* at 93.

### **C. Modifications to the Plan**

On December 30, 2002, the Commission entered its Final Order in Docket 98-0252/98-0335/00-0764 (Consol.) ("*Alt Reg Review Order*"). The modifications in this Order altered several aspects of the Company's alternative regulation plan.

#### 1. Price Cap Index.

At the outset, the Price Cap Index was modified as follows:

- a) Measure of Inflation - the Commission ordered that the measure of inflation to be used in the price cap index be changed from the fixed-weight GDPPI to the chain weighted GDPPI, *Alt Reg Review Order* at 84;
- b) Productivity ("X") Factor - the Commission ordered that the X factor should be set at 4.3% on a going forward basis, *id.*, at 88-89;
- c) Exogenous Change ("Z") Factor - the Commission ordered that no changes were necessary to the Z factor, nor was any clarification

necessary as to its use on an annual basis by the Commission, *id.*, at 91-92;

- d) Service Quality ("Q") Factor - the Commission modified several aspects of the service quality benchmarks, and how they are measured within the alternative regulation plan. *Id.* at 149. For purposes at hand, it is to be noted that the Commission ordered the Q factor to remain in the PCI calculation, and the penalty for failure to achieve a benchmark would continue to be a .25 reduction in the PCI. *Id.* at 92. Staff's Comments note too, that in November 2003, the Commission adopted revised administrative regulations concerning certain service quality measures. *Order*, Docket 00-0596 (November 5, 2003), revising 83 Ill. Adm. Code Part 730. These revisions to the rules took effect on December 1, 2003. Further, in its 2005 Annual Filing Order, the Commission established that the Q Factor should be calculated using the methodology set in Part 730. *Order* at 35, Docket 05-0231 (June 29, 2005). In addition, the Commission concluded that the Part 730 calculation methodology should be employed for purposes of triggering the \$30 million penalty for failure to comply with the OOS>24 benchmark. *Id.*

## 2. Pricing flexibility.

With respect to pricing flexibility, the Commission ordered no changes to the 2% upward pricing flexibility that was afforded to AT&T Illinois in the original *Alt Reg Order*. *Id.* at 94.

## 3. Price Baskets.

The *Alt Reg Review Order* also made several modifications to the basket structure. The changes were that:

- the Business basket was eliminated;
- a new basket, called the "Packages" basket, was introduced;
- the statutorily mandated Flat Rate and Enhanced Flat Rate offerings were placed in the Packages basket;
- the statutorily mandated Budget package was assigned to the Residential basket;
- the SimpliFive and CallPak residential calling plans were moved from the "Other" basket to the "Residential" basket.

## 4. Reinitialization of the PCI and API.

For purposes of the 2003 annual filing, the Commission ordered that the PCI and API of each basket be reinitialized to the value of 100. *Id.* at 107.

## 5. Other Actions

In its Order on the 2006 Annual Filing, i.e., Docket 06-0269, the Commission set out its findings and further required that:

- (5) in the event that the final order in Docket 06-0027 reclassifies any services to a non-competitive status, AT&T Illinois should recalculate and re-submit its 2006 annual filing, within 30 days if the date of the Commission's order finally disposing of any applications for rehearing or within 30 days of the expiration of the period in which applications for rehearing may be filed, if none are filed; or, it will make a show cause filing that details and analyzes why such an updated 2006 annual filing is not necessary,
- (6) Illinois Bell Telephone (AT&T Illinois) Illinois should be required to file new tariffs reflecting a PCI consistent with the determinations and conclusions herein. *Order* at 19, Findings 5 and 6, Docket 06-0269 (June 28, 2006)

On August 30, 2006, the Commission issued its final order in the competitive classification proceeding, i.e., Docket 06-0027. Therein, it concluded that certain residential packages that AT&T Illinois introduced in 2001 and in compliance with Section 13-518 of the Act, must be classified as non-competitive as a matter of law. Thus, the Flat Rate Package, Enhanced Flat Rate Package, and Residence Saver Pack Unlimited Package are statutorily designated as non-competitive.

On November 9, 2006, AT&T Illinois filed revised tariffs in compliance with the Commission's Order in Docket 06-0269. In addition, AT&T Illinois sought and was granted Commission approval in Docket 06-0719 to make adjustments to the 2006 Annual Filing (Docket 06-0269), so as to reflect the noncompetitive status of the packages previously excluded from that filing.

### III. AT&T ILLINOIS' 2009 ANNUAL FILING

#### A. The Company's Showing.

In accordance with the Plan's filing requirements, the Company submitted its fifteenth annual filing on April 1, 2009. In its filing, AT&T Illinois provided: (1) a calculation of the PCI; (2) a demonstration that each of the individual baskets' API would be less than, or equal to, the recalculated PCI (assuming the draft tariff pages are approved by the Commission); and (3) a summary of the analyses that purportedly verify compliance with Sections 13-507 and 13-505.1 of the Act.

A primary concern with AT&T Illinois' annual filings, while it remains under the Plan, is the calculation of the PCI. Exhibit 4 of the Company's filing contains the following calculation for the 2009 - 2010 PCI:

$$PCI_t = 88.2849 * [1 + .0203 - .043 + (-.0025)]$$

$$PCI_t = 88.2849 * [.9748]$$

$$PCI_t = 86.0640$$

Exhibits 1 through 3 contain the calculations of certain inputs to the PCI formula. Specifically, Exhibit 1 contains the company's annual filing calculations for the percentage change in the chain weighted GDPPI (2.03%); Exhibit 2 presents the Company's quality of service results for 2008 ; and Exhibit 3 states that the company proposes no exogenous change. Based upon the Company's assumptions, the proposed PCI for the period between July 2009 and June 2010 would be 86.0640, representing a 2.52% decrease from the previous year.

## **B. Staff's Analysis**

### **A. Preliminary Matters**

According to Staff, several timing issues are at play in this proceeding. The PCI is recalculated each year, starting with the PCI set in the previous year, and then factoring in inflation as reflected by the GDPPI, exogenous factors, and the Plan's service quality component. Likewise, the API is calculated based upon the API from the previous year, multiplied by the quotient of proposed revenue divided by current revenue. As noted, the total revenue in each basket is governed by the principle that the API in each basket cannot exceed the PCI in that basket. This is the most significant constraint on AT&T's non-competitive rates under the Plan.

The required adjustments to the Plan in any given year are a function of, and dependent upon, the adjustments made in all prior years,<sup>1</sup> as reflected by the API and PCI set in the immediately previous year. This fact takes on particular significance in this proceeding, for the following reasons.

On August 1, 2008 and September 15, 2008, AT&T filed tariff sheets that declared essentially all residential local services in MSAs – 2, 3, 6, 7, 9 and 15 competitive within the meaning of Section 13-502 of the Illinois Public Utilities Act. Under the terms of the Plan, this meant that the "impacted rate elements [were to have] be[en] removed from the API and the API [was to have] be[en] recalculated for the affected customer categories." AT&T filed a Petition to Reopen the 2008 Annual Price Cap proceeding to make necessary adjustments to the API, and hence to rates. However, the docket was not reopened, which meant that adjustments to the Plan reflecting the August 1 and September 15, 2008 competitive reclassifications were never made. As a result, the API and PCI being used as a baseline in this proceeding do not reflect such adjustments.

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<sup>1</sup> The exception to this general rule occurred when the commission reinitialized the API and PCI in the Alt Reg Review Order.

Further, the Commission elected to investigate the propriety of AT&T's August 1 and September 15, 2008 competitive reclassifications. This investigation was duly pursued, and the final order concerning this investigation was not final prior to issuing this order.

Accordingly, the Staff is of the opinion that, to arrive at a proper API calculation in this proceeding, several steps must be taken. First, the API must be recalculated in last year's price cap filing, pursuant to AT&T's Petition for Reopening. Second, the API must be carried forward to this year. Third, revised API / PCI comparisons must be carried out to determine whether rate reductions (over and above any already made) are required as a result of the revision to API. Fourth, if necessary, any changes to the classification of services resulting from the Commission's final order in the Greater Illinois Reclassification Proceeding must be integrated into the calculations (to the extent possible).

In their Initial Comments, the Staff offers calculations that reflect changes to API and hence to rates that would result from each of several possible decisions by the Commission.

#### 1. API and PCI Calculations

On August 1, 2008 AT&T filed the tariff reclassifying many services that are under the Plan. Assuming the adoption of the Proposed Order in the Greater Illinois Reclassification Proceeding, there are seven categories of services which will not be reclassified as the Company planned. Therefore, Staff will analyze three possible scenarios, and submit price cap calculations based upon each. These three scenarios are: (1) this price cap filing as is, without considering the impact, if adopted, of the Proposed Order in the Greater Illinois Reclassification Proceeding; (2) this price cap filing, assuming the Commission adopts the Proposed Order in the Greater Illinois Reclassification Proceeding; and (3) this price cap filing, assuming that the Commission will go beyond the Proposed Order in the Greater Illinois Reclassification Proceeding, and allow none of the services to be classified as competitive.

Staff notes that all of its calculations are based on the API and PCI that were carried forward unrevised from last year's price cap filing. As Staff has previously stated, however, the 2008 API and PCI figures must be revised to reflect the August 1 and September 15, 2008 competitive reclassifications, since these reclassifications will, even if the Commission reverses each and every one of them, be in force and effect for purposes of the Plan beginning on those stated dates through June 17, 2009. Accordingly, Staff's calculations are intended to provide an evidentiary basis for the necessary revisions, rather than to be adopted wholesale.

#### 1. Calculations - First scenario:

As noted, Scenario One assumes the existence and accuracy of all matters set forth in this price cap filing as is, without considering the impact of the Order in the Greater Illinois Reclassification Proceeding (ICC Docket 08-0569).

Staff has reviewed the filing as submitted by AT&T on April 1, 2009 and finds that AT&T has appropriately met the annual filing requirements as put forth by the Commission in the Alt Reg Order and the Alt Reg Review Order. Staff finds that the PCI calculation was performed appropriately. However, after the Commission enters a final Order in Docket No. 08-0569, the revenue reduction needs to be revised as the Old API will be revised.

## 2. Calculations - Second scenario:

Scenario Two assumes the existence and accuracy of all matters set forth in this price cap filing, except that the Commission adopts the Proposed Order in the Greater Illinois Reclassification Proceeding.

Staff has reviewed the filing as submitted by AT&T on April 1, 2009 and finds that AT&T has appropriately met the annual filing requirements as put forth by the Commission in the Alt Reg Order and the Alt Reg Review Order. Staff finds that the PCI calculation was performed appropriately. However, the API calculations are inaccurate and the rate reductions in these proposed tariffs yield a figure for total revenue that is significantly understated.

Assuming the adoption of the Proposed Order in the Greater Illinois Reclassification, the Old API as well as the New API presented in Exhibit 5 for affected baskets must be recalculated, because the following services will be classified as non-competitive.

- 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<sup>2</sup>

As a result, the revenues in the Residence and Other Services baskets will be considerably greater than amounts presented in this filing. Staff estimated that 78.53% more noncompetitive revenues would be added back into the two baskets. Consequently, greater price reductions are needed in order to be in compliance with the Alt Reg Orders. However, after the Commission enters its final Order in Docket No. 08-0569, the revenue reductions need to be revised as the Old API and services in the baskets will be revised.

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<sup>2</sup> Proposed Order, App. B, Greater Illinois Reclassification Proceeding

### 3. Calculations - Third scenario

Scenario Three assumes the existence and accuracy of all matters set forth in this price cap filing, except that the Commission goes beyond the Proposed Order in the Greater Illinois Reclassification Proceeding, and allows none of the services to be classified as competitive.

In Staff's opinion, the Company performed the PCI calculation appropriately. However, as result of the noncompetitive services excluded from the baskets, the New API calculation submitted by the Company was inaccurate, and the rate reductions in these proposed tariffs should be revised to yield revenue accordingly. However, after the Commission enters its final Order in Docket No. 08-0569, the revenue reductions need to be revised as the Old API and services in the baskets will be revised.

#### 2. Service Quality

In the Alt Reg Order, the Commission incorporated a service quality component into the PCI. If AT&T fails to meet any of the prescribed benchmarks for any of the service quality measures, the PCI will be adjusted downward by .0025.

The Alt Reg Review Order establishes, as a service quality measure, Average Speed of Answer – Customer Calling Center. The benchmark for this measure is 60 seconds, which means that AT&T must answer incoming customer calls within 60 seconds on annual average. In its annual rate filing, AT&T reports in that its performance, while meeting or exceeding 9 of the 10 measurement requirements contained in the Plan, failed to satisfy Speed of Answer – Customer Calling Centers. Specifically, AT&T's annualized average Speed of Answer to Customer Calling Centers was 73.57 seconds, exceeding the benchmark by 13.57 seconds, or 22.62%.

Under the terms of the Plan, the PCI must therefore be adjusted downward by .0025. Accordingly, Staff recommends that such an adjustment to the service quality "Q" factor be made in this proceeding.

#### 3. Staff Recommendation.

Staff recommends that the Commission grant AT&T's Petition to Reopen in ICC Docket No. 08-0249, and direct that the API be recalculated and carried forward to this proceeding. The Commission should then direct AT&T to submit revised Exhibit 5, 6 and other affected Exhibits that will support API / PCI comparisons to determine whether rate reductions (over and above any already made) are required as a result of the revision to API. Further, if necessary, any changes to the classification of services resulting from the Commission's final order in the Greater Illinois Reclassification Proceeding must be integrated into the calculations (to the extent possible).

### **C. The Attorney General's ("AG's") Comments**

On May 1, 2009, the Attorney General filed its Verified Initial Comments. The AG argues that continued service quality lapses raise the question of whether current deterrents to service quality degradation are sufficient. The AG notes that the size and effect of a service quality penalty is directly related to the amount of revenue included in the plan, and states that only 2% of Illinois Bell's revenue is now included in the plan. The AG opines that the Commission should be vigilant in responding to a downward trend in service quality. The AG notes that the Company has missed an annual "average speed of answer" quality measure, with consumers waiting an average of 73.57 seconds to talk to a customer service representative. The AG posed the question: "have the penalties for service quality misses become so minor that they no longer incent the Company to maintain service quality at historical levels?" Finally, the AG recommends the Commission consider keeping the instant docket open past the July 1, 2009 deadline, to consider amendments to the Alternative Regulation Plan that will provide effective incentives for the Company to maintain established service quality standards.

### **D. The Reply Comments**

Reply comments were filed in this docket by the Staff of the Commission and AT&T Illinois.

In Staff's view, the Attorney General asks for relief that is far outside the scope of the instant proceeding. According to Staff, this proceeding is convened to calculate a PCI applicable to rates for non-competitive services. It is not, as the AG would have it, a forum for reviewing the conditions of the plan or the precepts of price cap regulation. Staff does not believe the Commission should consider service quality related amendments to the Alternative Regulation Plan in this proceeding. Staff has argued in the past, and the Commission has found, that annual price cap filings are "not the proper forum in which to pursue [changes to service quality benchmarks.]"

Staff recommends that the AG's position be rejected insofar as it seeks to amend service quality measures in this proceeding. The Staff further recommends that the Commission grant AT&T's Petition to Reopen in ICC Docket No. 08-0249, and direct that the API be recalculated and carried forward to this proceeding. The Commission should then direct AT&T to submit revised Exhibit 5, 6 and other affected Exhibits that will support API / PCI comparisons to determine whether rate reductions (over and above any already made) are required as a result of the revision to API. Further, if necessary, any changes to the classification of services resulting from the Commission's final order in the Greater Illinois Reclassification Proceeding must be integrated into the calculations (to the extent possible).

Having carefully considered the AG's arguments on monthly service quality requirements, Staff is of the opinion that while AT&T Illinois' failed to satisfy some service requirements in some months of 2007, this is balanced by the Company's success in satisfying them for the entire year of 2007, which is precisely that which the Alt Reg

Review Order requires. As such, Staff explains, the AG's proposal deviates largely from all that has been litigated and established. Finally, Staff maintains that it monitors service quality performance and will bring any evidence of declining quality to the Commission.

AT&T Illinois also filed reply comments. AT&T agrees with Staff in its Comments that suggests that this year's APIs be determined in two steps: (1) the APIs should be recalculated to reflect the reclassification; and (2) those APIs should be carried forward to this proceeding to determine if additional rate changes are required.

AT&T Illinois has evaluated Staff's approach and has concluded that it is more consistent with the Plan's requirements than the one used by the Company. Therefore, the Company has recalculated the baskets' APIs in the manner suggested by Staff and will make the additional rate reductions that are required. Based on these recalculations, rates must decrease another \$406,000 annually. These revised APIs also caused shifts between the baskets in terms of where rate reductions are necessary. AT&T Illinois will look to the same rates that were the subject of its original rate proposal for the additional reductions – however, some rates will be reduced more, while others will be reduced less. AT&T Illinois is attaching to these Reply Comments revised Exhibits 5 (Service Baskets), 6 (Aggregate Revenue Test), 8 (Proposed Changes to Rates) and 9 (Actual Price Index ("API") Changes).

AT&T Illinois also points out that Staff and the Attorney General suggest that the rate charges approved in this proceeding will need to be revisited if the Commission were to return some or all of the services at issue in Docket No. 08-0569 to a noncompetitive classification (Staff's Second and Third Scenarios). (Staff Comments, pp. 14-16; AG Comments, pp. 4-6). AT&T Illinois agrees. However, there are timing issues, as the Attorney General acknowledges. Although the Order in Docket No. 08-0569 is expected in mid-June, *i.e.*, before the price changes approved in this proceeding will take effect, it would be impossible to incorporate any impacts from that proceeding into this proceeding. *First*, if any services are reclassified as noncompetitive, the Company requires time to recalculate the APIs and develop a rate proposal to implement any additional required reductions. *Second*, the Commission's Order in Docket No. 08-0569 will not be final on June 17. The parties have the right to seek rehearing, and the Commission must act on any such requests. The Commission's Order, therefore, would not be final for approximately 50 days after June 17 (30 days for the filing of Applications of Rehearing and 20 days for the Commission to act on them).

Accordingly, the Company recommends that the Commission address this issue the same way it did in Docket No. 06-0269 (the 2006 Annual Filing), where the MSA-1 reclassification was pending at the time that the Annual Rate Filing docket was being decided. As in that situation, this docket should be completed and a final order issued. The Commission's Order, however, should recognize the pendency of Docket No. 08-0569 and provide a process for reconsidering the rate changes approved herein should reconsideration prove necessary. In 2006, the Commission's Order provided as follows:

"To be sure, we have not been shown any reason to hold back a final order in these premises or delay the changes that stem from the instant filing. There are no open issues. In this regard, Staff comes closest to arriving at a reasonable way for dealing with the contingency at hand. If our order in Docket 06-0027 were to find that any of the Company's services are to be re-classified as non-competitive, we agree with Staff that AT&T Illinois needs to re-submit its annual filing. At the least, the Company would need to show cause why such a filing is unnecessary or inappropriate in the premises. And, we believe that AT&T would be able to make this filing 30 days, following final disposition of any applications for rehearing or within 30 days of the expiration of the period in which applications for rehearing may be filed (if none are filed) in Docket 06-0027." *Order in Docket No. 06-0269, supra*, p. 18; see also Finding (5).

In fact, the Commission did return certain services to noncompetitive status in Docket No. 06-0027, and a compliance proceeding was held to determine whether additional Plan-driven rate changes were required. *Order in Docket No. 06-0719*, adopted May 16, 2007. That process worked well, and it should be followed here.

However, the Company disagrees with the Attorney General suggestion that, if additional rate reductions are required as a result of the Commission's Order in Docket No. 08-0569, they should be retroactive to July 1, 2009. AT&T argues that this is not an issue for this proceeding. If the Commission does reclassify services as noncompetitive in Docket No. 08-0569 and AT&T Illinois resubmits its 2009 price cap filing as suggested above, the refund issue can be addressed in the compliance proceeding when all the relevant facts will be available. The Company notes that the Attorney General made exactly the same refund arguments in 2006 in connection with the MSA-1 reclassification and the Commission *rejected* them in the 2006 Annual Rate Filing compliance proceeding. *Order in Docket No. 06-0719, supra*, pp. 15-16.

The Company stated that based on the data that was submitted in this docket, there is no basis for the Attorney General's assertions that "the Company is putting its earnings ahead of maintaining the workforce and incurring the other expenses needed to assure that their service quality is maintained" and that penalties under the Alt Reg Plan have "become so minor that they no longer incent the Company to maintain service quality at historical levels." (AG Comments, p. 4). AT&T Illinois argues that the greatest incentive for the Company to maintain a commitment to service quality is not the service quality provisions of the Alt Reg Plan. Rather, it is the extraordinary amount of competition faced by AT&T Illinois in the market for local telecommunications service quality throughout Illinois – competition which has caused AT&T Illinois to lose over 44% of its residential switched access lines since 2000.

Furthermore, the concern expressed by the Attorney General regarding the "size and effect of the [Alt Reg Plan] service quality penalty" ignores the fact that, under the Alt Reg Plan, AT&T Illinois is also subject to a \$30 million penalty if it does not satisfy the OOS>24 benchmark on an annual basis. The Attorney General also ignores the fact that AT&T Illinois, like every other Illinois local exchange carrier, is subject to the Commission's Standards of Service (83 Ill. Admin. Code Part 730) (the "Service Quality

Rule”). Section 730.120 provides the Commission with authority to impose fines and penalties for violation of the Service Quality Rule upon complaint or upon the Commission’s own motion after notice and a hearing. Finally, the Attorney General fails to mention the fact that all carriers, including AT&T Illinois, pay customer credits for each and every missed service standard (installation within 5 days, OOS>24 and missed appointments) under the Commission’s Customer Credit Rules (83 Ill. Admin. Code Part 732). Accordingly, even if the potential revenue reduction under the service quality provisions of the Alt Reg Plan price cap formula were to fall to zero, AT&T Illinois would continue to have more than enough of a regulatory incentive to maintain service quality at historical levels.

AT&T maintains that the service quality component of the price index in the Alt Reg Plan applies on an annual, and not on a monthly basis. The Company points out that this was made clear in the Alt Reg Order, and reaffirmed in the Alt Reg Review Order. Therefore, AT&T argues that the Attorney General’s arguments regarding service quality and its proposal to “keep this docket open to consider amendments to the service quality portion of the Alternative Regulation Plan” should be rejected.

#### **E. Briefs on Exceptions and Reply Briefs on Exceptions**

On June 8, 2009, Briefs on Exceptions were filed by AT&T Illinois and Staff. Both the Company and Staff agree that the revised numbers filed in AT&T Illinois’ Reply comments are correct.

Staff observed that instead of reopening docket 08-0249, that administrative economy might well be served and the same result reached, if the methodology AT&T Illinois proposes in its Reply Comments were to be adopted. There, AT&T notes that:

The only factors that distinguish this year’s Annual Rate Filing from any Annual Rate Filing is the competitive reclassification pending in Docket No. 08-0569. In a Petition filed last September to reopen the record in the 2008 price cap filing (Docket No. 08-0249), AT&T Illinois pointed out that the August re-classification of local exchange services in the Greater Illinois LATAs as competitive had impacted the APIs for two of its baskets (Residence and Other) and that additional rate changes would be appropriate to bring them back into full compliance with Plan requirements. As Staff notes in its Comments, the Commission declined to act on this Petition. As a result, Staff suggests that this year’s APIs be determined in two steps: (1) the APIs should be recalculated to reflect the reclassification; and (2) those APIs should be carried forward to this proceeding to determine if additional rate changes are required.

AT&T Illinois has evaluated Staff’s approach and has concluded that it is more consistent with the Plan’s requirements than the one used by the Company. Therefore, the Company has recalculated the baskets’ APIs in the manner suggested by Staff and will make the additional rate reductions that are required. Based on these recalculations, rates must

decrease another \$406,000 annually. These revised APIs also caused shifts between the baskets in terms of where rate reductions are necessary. AT&T Illinois will look to the same rates that were the subject of its original rate proposal for the additional reductions – however, some rates will be reduced more, while others will be reduced less. AT&T Illinois is attaching to these Reply Comments revised Exhibits 5 (Service Baskets), 6 (Aggregate Revenue Test), 8 (Proposed Changes to Rates) and 9 (Actual Price Index ("API") Changes).

AT&T Reply Comments at 2-3 (citations omitted)

Staff found that AT&T's proposal appears to arrive at the same result as recommended by Staff and adopted by the Proposed Order, would be transparent to customers in terms of rate relief, and would result in fewer administrative steps than Staff's proposal as set forth in Initial Comments. This being the case, the Staff sees no reason for the Commission not to adopt the AT&T proposal as set forth in Reply Comments. The Staff notes that references to AT&T Exhibits 5, 6, 8 and 9 in the Proposed Order should be changed to AT&T Exhibits 5 (Revised), 6(Revised), 8(Revised) and 9(Revised).

A Response in Opposition to Bell's Motion for Protective Order was filed by Clinton A. Krislov. Mr. Krislov is challenging Illinois Bell Telephone request to conceal exhibits in this docket that show its revenue and operating profits. The Intervenor argues that these exhibits are neither confidential nor proprietary. This issue will be addressed in a subsequent proceeding, 09-0190.

On June 11, 2009, the Attorney General filed a Reply Brief on Exceptions. The AG points out that this Order should reflect the most recent action of the Commission. Since the Commission has allowed the full reclassification made by Illinois Bell in 2008, the appropriate calculation of the rate reductions in this docket are found in the revised exhibits attached to AT&T Illinois' Reply comments. According to the AG, this is consistent with the Exceptions filed by Staff and the Company.

#### **IV. COMMISSION ANALYSIS AND CONCLUSION**

The Commission is persuaded, largely by the Initial and Reply Comments of Staff, the Company and the Attorney General. The review conducted by Staff concludes that there are three possible scenarios for the API and PCI Calculations in this docket. First, is to consider the price cap filing without considering any changes or impact of the Greater Illinois Reclassification Proceeding. Second would be to consider this price cap filing assuming this Commission adopts the Proposed Order in the Greater Illinois Reclassification Proceeding. Third, would be to accept this price cap and assume that this Commission will allow none of the services to be classified as competitive in the Commission's final order in the Greater Illinois Reclassification Proceeding.

There is no dispute that AT&T Illinois failed to satisfy the service quality measure Average Speed of Answer- Customer Calling Center. The benchmark for this measure

was 60 seconds and the Company annualized average was 73.57 seconds. Under the terms of the plan, the PCI must be adjusted downward by .0025. This was done by the Company in its filing on Exhibit 4.

The Commission notes that the AG has certain concerns in this proceeding, i.e., whether the penalty for service quality misses have become so minor that they no longer incent the Company to maintain service quality at historical levels. The Commission is mindful of these concerns and will rely on the Staff of the Commission to pursue any action necessary to rectify the situation. However, as the Commission has found in the past, this is not the proper forum to pursue changes to the service quality benchmarks. The Attorney General also has requested that this Commission retain jurisdiction of this matter past the July 1, 2009 deadline for the purpose of examining whether refunds and rate reductions may be necessary if the Commission returns some of the recently reclassified residential services in the Greater Illinois Reclassification case to non-competitive status. The Commission finds no authority for it to retain jurisdiction of this matter beyond the July 1, 2009 deadline.

Since the order is not final in 08-0569, the Greater Illinois Reclassification case and this matter cannot be taken into account for this docket. If our order in Docket 08-0569 were to find that any of the Company's services are to be re-classified as non-competitive, we agree with Staff that AT&T Illinois needs to re-submit its annual filing. At the least, the Company would need to show cause why such a filing is unnecessary or inappropriate in the premises. We believe that AT&T would be able to make this filing 30 days, following final disposition of any applications for rehearing or within 30 days of the expiration of the period in which applications for rehearing may be filed (if none are filed) in Docket 08-0569.

Accordingly, AT&T Illinois' 2009 Annual Filing is approved as filed, and the 2.52% or \$ 3,782,253 in rate reductions described in Illinois Bell Revised Exhibit 8 is approved.

## **V. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Illinois Bell Telephone Company (AT&T Illinois) is an Illinois corporation engaged in the business of providing telecommunications services to the public in the State of Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Illinois Public Utilities Act;
- (2) the Commission has jurisdiction over Illinois Bell Telephone Company (AT&T Illinois) and the subject matter of this proceeding;
- (3) the recital of fact and law and the conclusions reached in the prefatory portion of this Order are supported by the record, and are hereby adopted as findings of fact and conclusions of law for purposes of this Order;

- (4) in the event that the final order in Docket 08-0569 reclassifies any services to a non-competitive status, AT&T Illinois shall recalculate and resubmit its 2009 annual filing within 30 days of the date of the Commission's final order disposing of any applications for rehearing or within 30 days of the expiration of the period in which application for rehearing may be filed, if none are filed; or it will make a show cause filing that details and analyzes why an updated 2009 annual filing is not necessary;
- (5) the API, PCI and rate reduction as set forth in revised Exhibits 5,6,8 and 9 attached to AT&T Verified Reply Comments are hereby adopted;
- (6) Illinois Bell Telephone Company (AT&T Illinois) should be required to file new tariffs reflecting a PCI consistent with the determinations and conclusions herein;
- (7) any materials submitted in this proceeding for which proprietary treatment was requested should be accorded proprietary treatment subject to the subsequent ruling and determination in docket 09-0190;
- (8) any petition, objections, and motions in this docket that have not been specifically disposed of should be disposed of in a manner consistent with our conclusions herein.

IT IS THEREFORE ORDERED that Illinois Bell Telephone Company shall, within 14 days of the entry of this Order, file tariffs reflecting a PCI consistent with the determinations and conclusions herein.

IT IS FURTHER ORDERED that any materials submitted in this proceeding for which proprietary treatment was requested shall be accorded proprietary treatment.

IT IS FURTHER ORDERED in the event that the final order in Docket 08-0569 reclassifies any services to a non-competitive status, AT&T Illinois should recalculate and resubmit its 2009 annual filing within 30 days of the date of the Commission's final order disposing of any applications for rehearing or within 30 days of the expiration of the period in which application for rehearing may be filed, if none are filed; or it will make a show cause filing that details and analyzes why an updated 2009 annual filing is not necessary.

IT IS FURTHER ORDERED that any objections, motions or petitions not previously disposed of are hereby disposed of consistent with the findings of this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 24<sup>th</sup> day of June, 2009.

(SIGNED) CHARLES E. BOX

CHAIRMAN

Exhibit 4

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BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
ILLINOIS BELL TELEPHONE ) No. 09-0190  
Petition Requesting Confidential )  
Treatment of Certain Portions of its )  
Alternative Regulation Plan Annual )  
Report. )

Chicago, Illinois

June 23, 2009

Met pursuant to notice at 10:00 a.m.

BEFORE:

MR. GLENNON DOLAN, Administrative Law Judge.

APPEARANCES:

MS. LOUISE A. SUNDERLAND  
225 West Randolph Street  
Chicago, Illinois 60606  
appeared for Illinois Bell;

MR. MATTHEW L. HARVEY  
160 North LaSalle Street  
Chicago, Illinois 60601  
appeared for Commission Staff.

SULLIVAN REPORTING COMPANY, by  
Teresann B. Giorgi, CSR

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I N D E X

<u>Witnesses:</u>	<u>Dir.</u>	<u>Crx.</u>	Re- <u>dir.</u>	Re- <u>crx.</u>	By <u>Examiner</u>
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E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
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1 JUDGE DOLAN: By the direction and authority  
2 of the Illinois Commerce Commission, I call  
3 Docket 09-0190, Illinois Bell Telephone Company, a  
4 Petition requesting confidential treatment of  
5 certain portions of its Alternative Regulation Plan  
6 Annual Report.

7 Would the parties identify themselves  
8 for the record.

9 MS. SUNDERLAND: For Illinois Bell Telephone  
10 Company, Louise A. Sunderland, 225 West Randolph  
11 Street, Chicago, Illinois 60606.

12 MR. HARVEY: Appearing for the Staff of the  
13 Illinois Commerce Commission, Matthew L. Harvey,  
14 160 North LaSalle Street, Suite C-800, Chicago,  
15 Illinois 60601.

16 JUDGE DOLAN: All right. Let the record reflect  
17 there are no other appearances.

18 This is a status for the Petition and  
19 as far as I can tell there has been no other filings  
20 by any other party concerning this Petition for  
21 confidential treatment.

22 Is that the understanding of the

1 parties?

2 MR. HARVEY: That is correct, your Honor.

3 MS. SUNDERLAND: Yes, that is my understanding  
4 as well.

5 JUDGE DOLAN: Okay. Since there is no  
6 objections to this Petition, then I assume I'll  
7 issue an order granting the request of Illinois Bell  
8 in this matter.

9 Is there anything else then to come  
10 before the Commission today?

11 MR. HARVEY: Nothing from Staff, your Honor.

12 MS. SUNDERLAND: Nothing.

13 JUDGE DOLAN: I'll mark this matter heard and  
14 taken.

15 HEARD AND TAKEN

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## Reas

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**From:** Reas  
**Sent:** Thursday, June 25, 2009 9:37 AM  
**To:** Harvey, Matthew  
**Cc:** Clint  
**Subject:** RE: official commission order of case or proceeding - 09-0188

Mr. Harvey:

I have another procedural question for you regarding this docket. The attached order states that the confidentiality of Bell's Annual Rate Filing exhibits will be determined in the 09-190 docket, which we did not intervene in. Additionally, the 09-190 docket shows that there was a hearing that took place last Tuesday, June 23, 2009.

Can you let me know what took place in the 09-190 hearing on Tuesday?

Thank you again for your assistance in this matter.

Reas Bowman

M. Reas Bowman  
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**From:** Cook, Stephanie [mailto:[scook@icc.illinois.gov](mailto:scook@icc.illinois.gov)]  
**Sent:** Thursday, June 25, 2009 9:06 AM  
**To:** @ Sunderland, Louise; @ Wardin, Karl; Clint; Reas; @ Dale, Janice; @ Satter, Susan; Chang, Karen; Harvey, Matthew  
**Subject:** official commission order of case or proceeding - 09-0188

Attached is a copy of the Order entered by this Commission. Related memoranda will be available on our web site ([www.icc.illinois.gov/e-docket](http://www.icc.illinois.gov/e-docket)) in the docket number referenced above.

7/17/2009