

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
)	Docket No. 09-0382
Revision of 83 Ill. Adm. Code 732)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S
REVISED MOTION FOR INITIATION OF SECOND NOTICE PERIOD

NOW COMES the Staff of the Illinois Commerce Commission, and by and through its undersigned counsel moves for initiation of a Second Notice Period, and in support thereof states as follows:

1. On August 10, 2009, the Staff submitted a Staff Report recommending that the Commission initiate a rulemaking proceeding to make certain revisions to 83 Ill. Adm. Code Part 732. *Initiating Order* at p. 1. The Staff attached draft revision to the Code Part in question, which were, per the Staff Report, based on a consensus formed among participants in a workshop process convened by the Staff. *Id.*

2. On August 19, 2009, the Commission initiated the above-captioned proceeding. *Id.*

3. In its Initiating Order, the Commission stated that:

The Staff report summarized the results of the industry workshops that were conducted for the purpose of allowing the Commission to meet its requirements to review all telecommunications rules pursuant to Section 13-512 of the PUA. The Staff report recommended that the Commission initiate a rulemaking to revise Part 732 without the entry of an order authorizing the submission of the first notice of proposed amendment to the Secretary of State.

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that: ...(6) a

proceeding should be initiated to revise 83 Ill. Adm. Code 732, limited to those issues detailed in the Staff Report dated August 10, 2009. *Initiating Order* at p. 1-2.

4. Based upon these findings, the Commission ordered that: “a proceeding should be initiated to revise 83 Ill. Adm. Code 732, limited to those issues detailed in the Staff Report dated August 10, 2009.” *Initiating Order* at p. 2.

5. Section 5-40 of the Illinois Administrative Procedure Act provides in relevant part that: “[e]ach agency shall give at least 45 days' notice of its intended [rulemaking] action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register.” 5 ILCS 100/5-40(b). Section 5-40 further provides that the notice period commences upon publication in the Illinois Register. *Id.*

6. The First Notice and proposed amendments were published in the Illinois Register on April 9, 2010. See 34 Ill. Reg. 4954, 2010 WL 1722259 (April 9, 2010).

7. Accordingly, the First Notice period need not extend beyond May 24, 2010. See 5 ILCS 100/5-40(b) (First notice need not exceed 45 days).

8. Section 5-40(b) further provides, in relevant part, that:

The agency shall hold a public hearing on the proposed rulemaking during the first notice period if (i) during the first notice period, the agency finds that a public hearing would facilitate the submission of views and comments that might not otherwise be submitted or (ii) the agency receives a request for a public hearing, within the first 14 days after publication of the notice of proposed rulemaking in the Illinois Register, from 25 interested persons, an association representing at least 100 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government that may be affected.

5 ILCS 100/5-40(b)

9. Inasmuch as the draft rule is the result of workshops attended by representatives of consumer and government groups, telecommunications industry representatives, and members of the Staff, and reflects a consensus reached by those parties, the Staff is of the opinion that public hearings would not facilitate the submission of views and comments that might not otherwise be submitted.

10. On October 7, 2009, a status hearing was convened in this proceeding, at which time intervention was granted to several parties, each of whom later expressed approval for Staff's draft amendments to Part 732 as set forth in the August 10, 2009 Staff Report. (Tr. at p. 14, December 9, 2009)

11. Further, there has been no request for a public hearing from any person, group or entity entitled to request a hearing. In any case, the time for such a request expired on May 24, 2010. Accordingly, in the Staff's opinion, no hearing need be convened.

12. Section 5-40(c) of the Administrative Procedure Act provides in relevant part that:

Each agency shall provide additional notice of the proposed rulemaking to the Joint Committee on Administrative Rules. The period commencing on the day written notice is received by the Joint Committee shall be known as the second notice period and shall expire 45 days thereafter unless before that time the agency and the Joint Committee have agreed to extend the second notice period beyond 45 days for a period not to exceed an additional 45 days or unless the agency has received a statement of objection from the Joint Committee or notification from the Joint Committee that no objection will be issued. ... After commencement of the second notice period, no substantive change may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee.

5 ILCS 100/5-40(c)

13. The Staff recommends that the Commission enter an order directing that notice be provided to the Joint Committee on Administrative Rules and that a Second Notice Period be commenced. The Staff has prepared a Draft Second Notice Order, appended hereto as Attachment No. 1.

WHEREFORE, Staff respectfully requests that its recommendations as set forth herein be adopted.

Staff of the Illinois
Commerce Commission



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September 2, 2010

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this proceeding. On March 10, 2010, the Commission entered an Order beginning the first notice period pursuant to Section 5-40(b) of the Illinois Administrative Procedure Act. The proposed rule was published in the Illinois Register in Volume 34, Issue 15, on April 9, 2010, at pages 4954-4969, 2010 WL 1722259.

Mr. Hoagg's testimony addresses each of these requirements, except for the regulatory flexibility analysis. We observe, however, that the purpose of the proposed amendments is to add language to reflect a statutory exemption, eliminate superfluous references, and rescind certain unnecessary reimbursement procedures. Accordingly, we believe that a recitation to that effect is sufficient to satisfy the regulatory flexibility requirement.

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

- (1) the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (2) the recitals of fact set forth in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact;
- (3) the proposed amendment of 83 Ill. Adm. Code 732, as reflected in the attached Appendix, should be submitted to the Joint Committee on Administrative Rules, pursuant to Section 5-40(c) of the Illinois Administrative Procedure Act to begin the second notice period.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the proposed amendment of 83 Ill. Adm. Code 732, as reflected in the attached Appendix, be submitted to the Joint Committee on Administrative Rules, pursuant to Section 5-40(c) of the Illinois Administrative Procedure Act.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By order of the Commission this XX day of XXXX, 2010.

(SIGNED) MANUEL FLORES

Acting Chairman