

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	Docket No. 11-0623
	:	
Amendment of 83 Ill. Adm. Code 732	:	

REPLY BRIEF ON EXCEPTIONS OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”) and files its Reply Brief on Exceptions to the Cable Television and Communications Association of Illinois (“Competitive Providers”) Brief on Exceptions To Proposed Second Notice Order filed on July 19, 2012 (CP BOE). For the reasons set forth in this Reply Brief on Exceptions, the Competitive Providers arguments regarding the alleged deficiencies in the Proposed Second Notice Order should be rejected.

The Competitive Providers take issue with what they describe as “proposed additional regulatory distinctions being created in the proposed rule that are not found in the Act.” (CP BOE at 2) They then, in their Brief on Exceptions, point to several differences between customer credit requirements imposed upon Electing Providers and customer credit requirements imposed upon providers of competitive services that do not elect Market Regulation. (CP BOE at 5 and 7) A plain reading of the Public Utilities Act (“Act”) demonstrates that the Competitive Providers misinterpret the Act and fail to fully recognize the distinctions between Market Regulation and regulation applicable to competitive providers that have not elected Market Regulation.

While P.A. 96-0927 altered few requirements applicable to local exchange carriers providing competitive service under the regulatory structure of the Pre-P.A. 96-0927 Public Utilities Act, it created a new type of regulatory structure, called market regulation for competitive retail services (Market Regulation), available to all providers of either competitive or noncompetitive retail telecommunications services. (220 ILCS 5/13-506.2) In exchange for certain commitments (e.g., a commitment to offer certain safe harbor residential local exchange telephone packages at prescribed rates (220 ILCS 5/13-506.2(d)), telecommunications carriers that elect market regulation (Electing Providers) are relieved of certain statutory requirements that would otherwise apply.

P.A. 96-0927 states that Section 13-712 ceases to apply to Electing Providers (220 ILCS 5/13-506.2(k)) and Section 13-712 is the statute pursuant to which part 732 was promulgated. (83 Ill. Admin. Code Part 732, Authority) While P.A. 96-0927 does include new customer credit requirements applicable to Electing Providers specified in Section 13-506.2(e), these requirements differ in some marked and significant ways from those found in Section 13-712. For example, Section 13-712 prescribes customer credit requirements for residential and business lines used for local exchange service. (220 ILCS 5/13-712) Section 13-506.2, however, prescribes customer credit requirements for only certain residential lines used for local exchange services (i.e., the consumer choice safe harbor options and stand-alone residential network access lines and usage, or for any geographic area in which such stand-alone service is not offered, a stand-alone flat rate residence network access line for which local calls are not charged for frequency and duration). (220 ILCS 5/13-506.2(a)(2), (d), and (e)) Thus, Electing Providers are subject to customer credit requirements in 13-506.2(e) for only a

fraction of customer classes, while telecommunications carriers that do not elect Market Regulation are subject to customer credit requirements for a broad fraction of the customer classes. This is a statutory distinction that the Commission cannot alter. Notably, while the Competitive Providers assert that they have addressed distinctions in the Act (CP BOE at 3) in their proposed rules, they fail to include this statutory distinction and, as a result, the proposed rules cannot be adopted by the Commission.

More pointedly, Section 13-712 gives the Commission the ability to promulgate customer credit rules and specifies only minimum requirements that the Commission must include in these rules. (220 ILCS 712(c) and (e)) P.A. 96-0927 preserved the permissive language included in Section 13-712. For Electing Providers, however, P.A. 96-0927 included no such permissive language. Section 13-506.2(e) specifies the customer credit requirements that Electing Providers are to meet and does not include the “minimum requirements” language of Section 13-712. Thus, P.A. 96-0927 specifically retained Commission discretion to establish additional customer credit requirements beyond those specifically identified in the statute, while removing such language in Section 13-506.2(e). Again, the Competitive Providers entirely overlook this statutory distinction created by P.A. 96-0927 while arguing they are being subject to disparate treatment.

In sum, P.A. 96-0927 made few changes to statutory requirements imposed upon telecommunications carriers that provide lines used for local exchange service, but that do not elect to be subject to Market Regulation. The statutory changes made to the customer credit requirements imposed upon these providers are appropriately included in the proposed Part 732. In arguing that the Commission should have used its

discretion to amend Part 732 further, the Competitive Providers are effectively arguing that the Commission erred by failing to amend customer credit requirements that the General Assembly could have altered, but did not, when it enacted P.A. 96-0927. The Competitive Providers argue that the “primary rule of statutory construction is to ascertain and effectuate the intent of the legislature,” (CP BOE at 4, citing *Harrisonville Telephone Company v. Illinois Commerce Commission*, 212 Ill.2d 237 (2004)) yet at the same time they rely upon broad legislative history to support their main argument. (CP BOE, p. 4) By doing this the Competitive Providers ignore a fundamental rule of statutory construction, that there is no need to resort to legislative history when the legislative intent is clear from the plain language of the statute. *Village of Buffalo v. Illinois Commerce Commission*, Ill.App.3d 591, 595 (4th Dist. 1989). Here the Commission has followed the plain language of the statute. The Commission’s actions are consistent with P.A. 96-0927 and they certainly do not constitute “regulatory distinctions ... not found in the Act” as the Competitive Providers assert (CP BOE at 2).

CONCLUSION

For all the above reasons, Staff respectfully recommends that the Commission reject in their entirety the Competitive Providers exceptions and arguments regarding the alleged deficiencies with the Proposed Order.

Respectfully submitted,

/s/

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