

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

<b>Illinois Commerce Commission</b>	)	
<b>On its Own Motion</b>	)	
	)	
<b>Investigation concerning Illinois Bell</b>	)	<b>Docket No. 01-0662</b>
<b>Telephone Company's compliance</b>	)	
<b>with Section 271 of the</b>	)	
<b>Telecommunications Act of 1996</b>	)	

**REPLY OF CIMCO COMMUNICATIONS, INC.,  
FORTE COMMUNICATIONS, INC., AND XO ILLINOIS, INC. TO SBC ILLINOIS'  
OPPOSITION TO MOTION TO HOLD ISSUANCE OF FINAL ORDER IN  
ABEYANCE AND CONDITIONAL REQUEST  
FOR FURTHER HEARINGS**

CIMCO Communications, Inc. ("CIMCO"), Forte Communications, Inc. ("Forte"), and XO Illinois, Inc. ("XO"), hereby respond to SBC Illinois' Opposition to Motion to Hold Issuance of Final Order in Abeyance and Conditional Request for Further Hearings filed on Thursday, May 9, 2003. In support of this Response, CIMCO, Forte and XO state as follows:

The enactment of senate bill 885 ("SB 885") changes the course of this proceeding. On May 9, 2003, subsequent to the filing of McLeod's Motion, SB 885 passed the Illinois Senate and was signed into law by the Governor. SBC would have the Commission be helpless of the fact that SBC's UNE rates are soon to be increased in a manner that directly calls into question whether SBC's UNE rates will be TELRIC compliant under a Checklist Item 2 analysis. SBC would then have the Commission ignore its duty to analyze whether SB 885 will create a "price squeeze" as part of Section 271's public interest standard. SBC's

arguments are both directly contrary to the Commission’s purpose in this proceeding – to establish a complete factual record and make a recommendation to the FCC based on that record. The Commission should rule in favor of MTSI’s Motion to Hold Issuance of Final Order in Abeyance and Conditional Request for Further Hearings.<sup>1</sup>

1. Price Increases

SBC first claims that the FCC “has consistently rejected the theory that potential future rate changes are a barrier to Section 271 approval.” (SBC Response at 2) Here, however, there is no longer any question that SB 855 will increase SBC’s rates. Moreover, SB 855 clearly shows *how* SBC’s rates will be increased. SB 855 requires the ICC to develop rates that use fill factors and depreciation rates that are not forward-looking. The use of current figures rather than future figures clearly raises into question whether SBC’s post-legislation rates are TELRIC compliant. That question is directly related to the Commissions Checklist Item 2 recommendation to the FCC.

SBC argues that the contention that SB 855 will create UNE rates that are not TELRIC compliant is “pure speculation”. (SBC Response at 4) However, the only way to end that “speculation” is for the Commission to hear evidence regarding SBC’s TELRIC compliance. Since the Commission is currently in the midst of deciding whether SBC complies with Checklist Item 2, now is the time to make that decision.

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<sup>1</sup> Since SB 885 was enacted, McLeod’s Motion is no longer “conditional”.

## 2. Public Interest Analysis

Finally, SBC makes the incredible claim that the Commission has no say in the public interest analysis. That claim would obviously be news to the ALJ, whose public interest section from the PEPO contained approximately 140 pages of discussion. SBC's claim also ignores the fact that other states' have regularly made public interest recommendations during 271 proceedings. SBC's point here seems to be "let the FCC handle it". The problem with that position, however, is the fact that the ICC must create an "adequate factual record" that the FCC is able to rely on to determine whether a local telecommunications market "is, and will remain, open to competition." (See In the Matter of Ameritech Michigan, 12 FCC Rcd 20,543 at ¶ 386)

The Commission should analyze whether SB 885's mandate of certain fill factors and depreciation rates in setting unbundled loop rates leased by competitors would create such a price squeeze. Moreover, SB 885, as amended by Amendment 1, would relieve SBC of the obligation otherwise imposed by 220 ILCS 5/13-505.1 to adjust its retail rates for the changes in its unbundled loop rates based on the "imputation" test prescribed by Section 13-505.1. SB 885 therefore creates two certainties: within 30 days of May 9, 2003, UNE rates will rise to a level that can be predicted with some precision and retail rates must remain the same. Thus, there is no speculation over the fact that SB 885 will immediately raise UNE rates to a level that will be higher than retail rates in all parts of SBC's territory. The Commission should therefore reopen the record in

order to determine how SBC could possibly pass the public interest test given this new relationship between wholesale and retail rates.

Conclusion

WHEREFORE, CIMCO, Forte and XO state that the Commission should decline to follow SBC's recommendations, and instead adopt the Motion of McLeodUSA Telecommunications Inc. to reopen the record pursuant to 83 Ill. Adm. Code 200.870 and hold further hearings prior to issuance of the final Order to take evidence on the determinations to be made in this docket that are impacted by the enactment of SB 885.

Respectfully submitted,

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