

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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Illinois Bell Telephone Company	)	
	)	
	)	Docket 03-0323
Petition to Determine Adjustments to UNE	)	
Loop Rates Pursuant to Section 13-408	)	
Of the Public Utilities Act	)	

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**Comments of XO Illinois, Inc., Forte Communications, Inc., and  
CIMCO Communications, Inc.  
ON LIMITED ISSUES REGARDING SBC'S PETITION  
PURSUANT TO SECTION 13-408**

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## INTRODUCTON

On May 12, 2003, SBC filed a petition to implement 220 ILCS Section 5/13-408 of the Illinois Public Utilities Act. The Petition seeks to establish rates for certain unbundled network elements. The Commission initiated this docket to implement SBC's loop rates.

The establishment of this proceeding, through SBC petition and subsequently by the Commission's limited action fails to provide effected parties with proper notice or opportunity to participate. Other than filing comments and affidavits, parties have had no opportunity to present or much less contest the limited information SBC has presented.<sup>1</sup> The basis for SBC's affidavits cannot be tested – either live or just as importantly – through sufficient discovery and analysis. The SBC Petition and affidavits are barely more than a thumbnail outline of SBC's conclusions. Significantly, SBC has failed to carry its burden of proof in this proceeding. By submitting limited information SBC has not demonstrated, as it is required to, all the changes it has made to the ICC's last lawful rates in ICC Docket No. 96-0486 or why the utility's specific alternative changes and assumptions are allegedly reasonable.

## ARGUMENT

In part, 220 ILCS Section 5/13-408 directs the ICC to “determine the specific required adjustments with respect to fill factors and depreciation lives by employing the models and methodology used to generate the proposed rates

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<sup>1</sup> XO Illinois, Inc., Forte Communications, Inc. and CIMCO Communications, Inc. are some of the parties jointly sponsoring the Affidavit of Michael Starkey, filed today.

submitted . . . in ICC Docket 02-0864.” It is important to note that the General Assembly only mandated the use of the “models and methodology” proposed by SBC in Docket 02-0864 to develop fill factors and depreciation rates in order to make “adjustments” to current UNE rates. It did not mandate that the Commission accept as just and reasonable every other input and assumption in SBC’s 02-0864 model or use that model in setting rates. Yet that is what SBC has done in the rates it has proposed in this proceeding. It has asked the Commission to approve rates calculated from the ground up using SBC’s model, inputs and assumptions instead of simply adjusting existing rates to account for the fill factors and depreciation rates as mandated in P.A. 93-0005 (“SB 885”).

SBC’s loop rates are comprised of many more inputs besides fill factors and depreciation lives. There are hundreds of other additional inputs and assumptions that the Illinois legislation does not speak to. Those inputs and assumptions, along with the model used to derive rates from those inputs and assumptions, must be analyzed in order to comport with the Commission’s duty pursuant to federal law. 47 U.S.C. §252, 47 CFR 51.505. SB 885, with its 30 day deadline, does not allow such an analysis. In fact SBC’s own filing, *Opposition to Z-Tel Communications, Inc.’s and Covad Communication Company’s Emergency Motion for Continuance of Briefing Schedule and Request that SBC Produce Witnesses for Deposition on Less Than 14 Day’s Notice*, at 7, appears to agree with this assessment. Thus, the only way this Commission can comply with both SB 885 and its obligations under the

Telecommunications Act of 1986 is to adjust current rates – based on the assumptions, inputs and models in Docket 96-0486 – to reflect the legislatively mandated fill factors and depreciation rates.

SBC has overreached and tried to slip by every other input, assumption in its 02-0864 presentation along with the model it used in that case. If the General Assembly had wanted to force the Commission to use those inputs, assumptions and that model or to consider SBC's arguments in favor of those inputs, assumptions and model, then the General Assembly would have said so. By explicitly limiting its instructions to fill factors and depreciation rates and giving it 30 days to implement the changes, the General Assembly was leaving this Commission with the ministerial task of making two adjustments to the inputs, assumptions and model used to develop the rates ordered in 96-0486. SB 885 tied this Commission's hands on two issues. It gave it neither a mandate nor authority to let SBC modify the 96-0486 inputs, assumptions and model in any other way. Such changes can only be done in a proceeding that complies with the ratemaking provisions of the Public Utilities Act.

If the Commission believes that SB 885 left the Commission with more than merely a ministerial task, then it must find that there are numerous provisions in the Public Utilities Act that should apply to this proceeding. Nevertheless, CLECs have not been afforded basic procedural due process rights in a proceeding that will have a significant impact on their rights. CLECs have not received notice of this proceeding, even though the rates established by the Commission will purportedly be used to amend rates contained in

interconnection agreements between SBC and CLECs. Thus, each Illinois CLEC that has an interconnection agreement with SBC could be severely impacted. Moreover, the Commission has not afforded CLECs the opportunity for a hearing in order to cross-examine SBC's witnesses. SBC witnesses sponsor voluminous workpapers. Beyond that, several parties have served discovery requests to SBC as part of the abated 02-0864 docket and the current 03-0323 docket.

CLECs have not been given: (1) sufficient time to review and study SBC's workpapers and discovery responses; or (2) the opportunity to question SBC's witnesses regarding their workpapers and discovery responses. At a status hearing held on May 14, 2003, several parties requested an opportunity to conduct a hearing pursuant to the requirements of the Illinois Public Utilities Act and the Illinois Commerce Commission's rules of practice. The Administrative Law Judges denied this request. Over various parties' objections, a schedule was set with initial comments to be filed by the parties on May 21, 2003.

XO, Forte and CIMCO have attempted to review the affidavits submitted by SBC Illinois discussing the rates proposed by the company to comply with 220 ILCS Section 5/13-408 of the Illinois Public Utilities Act. However, the acknowledged procedural limitations of this proceeding have not allowed a comprehensive review. Counsel for XO, Forte and CIMCO also requested and received voluminous workpapers (in electronic format) associated with this filing, but time has permitted only an extremely cursory review of these documents. Given the procedural deficiencies and severe time constraints, XO, Forte and

CIMCO do not believe it will be possible for Staff and all parties to develop an adequate record for Commission review.

#### CONCLUSION

XO, Forte and CIMCO respectfully request that the Commission deny SBC's Petition as insufficiently supported and failing to comply with the Public Utilities Act and immediately initiate a proper tariff investigation of SBC's UNE rates as part of the Final Order in this proceeding.

Respectfully submitted,

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