BEFORE THE
ILLINOIS COMMERCE COMMISSION

PUBLIC UTILITY REGULAR OPEN MEETING

Chicago, Illinois
October 25, 2011

Met, pursuant to notice, at 10:30 a.m.

BEFORE:

MR. DOUGLAS P. SCOTT, Chairman (via videoconference)

MS. LULA M. FORD, Commissioner

MS. ERIN M. O'CONNELL-DIAZ, Commissioner

MR. SHERMAN J. ELLIOTT, Commissioner

MR. JOHN T. COLGAN, Acting Commissioner (via videoconference)

SULLIVAN REPORTING COMPANY, by
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CHAIRMAN SCOTT: Pursuant to the provisions of the Illinois Open Meetings Act, I now convene a regular Open Meeting of the Illinois Commerce Commission. With me in Springfield is Acting Commissioner Colgan, in Chicago are Commissioners Ford, O'Connell-Diaz, and Elliott, I'm Chairman Scott.

We have a quorum.

Before moving into the agenda, according to Section 1700.10 of Title II of the Administrative Code, this is the time we allow members of the public to address the Commission. Members of the public wishing to address the Commission must notify the Chief Clerk's Office at least 24 hours prior to the Bench Session. According to the Chief Clerk's Office, we have no request to speak at today's session.

Moving into the agenda, Item 1 today is Docket No. 11-0661. This is American Transmission Company's Petition for authority to construct a new 345,000 volt transmission line in Lake County.

Before us today is a motion made by Staff to extend
the statutory deadline for Commission action in this Docket. ALJ Teague recommends granting the motion.

Is there any discussion?

COMMISSIONER O'CONNELL-DIAZ: Just a real quick question for Judge Teague.

The additional 75 days then, that's the statutory deadline?

JUDGE TEAGUE: Yes.

COMMISSIONER O'CONNELL-DIAZ: Thank you.

CHAIRMAN SCOTT: Any further discussion?

(No response.)

Is there a motion to grant our request an extension?

COMMISSIONER O'CONNELL-DIAZ: So moved.

ACTING COMMISSIONER COLGAN: So moved.

CHAIRMAN SCOTT: Is there a second?

COMMISSIONER ELLIOTT: Second.

CHAIRMAN SCOTT: It's been moved and seconded.

All in fair say "aye."

(Chorus of ayes.)

Any opposed?

(No response.)
The vote is 5-0 and the request is granted. We will use a 5-0 vote for the remainder of today's agenda unless otherwise noted.

Item 2 is Docket No. 09-0269. This is PlatinumTel Communications' application for designation as an eligible Telecommunications Carrier. ALJ Riley recommends entry of an Interim Order finding that PlatinumTel provide commercial mobile radio services using a combination of its own facilities and resold services.

Is there any discussion?

COMMISSIONER O'CONNELL-DIAZ: Chairman, if I might inquire a simple question.

CHAIRMAN SCOTT: Sure.

COMMISSIONER O'CONNELL-DIAZ: Judge Riley, with regard to the -- this is obviously an Interim Order so there will be -- in accordance with your memo and your recommendation is that the Staff now will do an investigation relative to this Petition. If there is a finding that they do not qualify, is there a refund mechanism for those funds that, I think, will be flowing based upon this Interim Order?
JUDGE RILEY: My best answer is, I don't know of any refund mechanism.

COMMISSIONER O'CONNELL-DIAZ: So that would be something that we would need to address --

JUDGE WALLACE: Commissioner --

COMMISSIONER O'CONNELL-DIAZ: Yes.

CHAIRMAN SCOTT: Judge Wallace.

JUDGE WALLACE: I believe there is a refund mechanism, but I'm not sure how it works at this point.

COMMISSIONER O'CONNELL-DIAZ: Okay.

CHAIRMAN SCOTT: Is that something that could be dealt with in the final order?

JUDGE WALLACE: Yes.

COMMISSIONER ELLIOTT: I sort of had a fundamental question regarding how we make the decision without the review.

COMMISSIONER O'CONNELL-DIAZ: Yes. It's too quick.

COMMISSIONER ELLIOTT: If Staff has not had a full opportunity to review the evidence, then I'm a little troubled by the fact that we're assuming, at
least interim-wise, that there's sufficient evidence
to make a finding.

JUDGE RILEY: What the Order is intended to do
is to try to get the company back on solid economic
footing. At the present time the payments have been
stopped -- the universal service fund payments have
been stopped and the company is in imminent danger of
having to close its doors and suspend service, and
they have a substantial number of customers.

COMMISSIONER O'CONNELL-DIAZ: Okay. I see.

JUDGE RILEY: And so what they want to do is
just be able take this Order to the FCC and say, We
are a facilities-based operation. Please get the
universal service fund payments flowing again so we
can continue to provide the services. And then Staff
can do its investigation with the evidence and the
testimony and whatever else it needs.

COMMISSIONER ELLIOTT: But the idea is that the
evidence on it's own unrebutted is sufficient, in
your mind, to make this finding?

JUDGE RILEY: So far, yes. On an interim
basis, absolutely.
COMMISSIONER O'CONNELL-DIAZ: And Staff has agreed to that to, haven't they?

JUDGE WALLACE: Yes. That's my understanding.

COMMISSIONER O'CONNELL-DIAZ: In fact, they say that there can be a threshold finding that there is sufficient evidence to find so; but they need to make a more critical analysis in this next proceeding that we'll be doing; correct?

JUDGE RILEY: Exactly. But the whole idea too for the present time is to alleviate the economic emergency for the company.

COMMISSIONER O'CONNELL-DIAZ: Okay. You know, those universal service funds, there's a lot of money flowing around and they should go to the right players and I think sometimes they don't. So we need to be very cautious. Thank you.

CHAIRMAN SCOTT: Any further discussion?

(No response.)

Is there any objection to entering the Interim Order?

(No response.)

Hearing none, the Interim Order is
entered.

Item 3 is Docket No. 11-0597. This is
Infotelecom's complaint against Illinois Bell seeking
interpretation of an Interconnection Agreement. This
item has been noticed for discussion purposes.

ALJ Riley, would you like to give us a
short briefing -- or not so short depending on what
you need.

JUDGE RILEY: Infotelecom and Illinois Bell
entered into a garden-variety negotiated agreement.
An issue arose as to what rate should be paid by
Infotelecom for the termination of this Internet
protocol PSPN traffic. Infotelecom saying that it
was the reciprocal compensation rate, which is lower
than the switched access tariff rate. And what they
agreed to do was to have Infotelecom pay the lower
rate and then calculate on a monthly basis what they
would have paid at the higher right and then escrow
that amount until the FCC -- to whom they have
submitted this dispute -- made a ruling.

And the dispute now arose as to what
is the -- what amount should be escrowed. And
Infotelecom is saying, We haven't reach -- the trigger amount was $500,000 per month. And Infotelecom is saying, We haven't calculated more than $500,000 in any month in any state involved. Illinois Bell is saying this is a cumulative amount and it accumulates month by month over an entire 13 state region, so there are millions of dollars that should be in escrow right now and nothing is in escrow. And the written decision that I issued yesterday finds for Illinois Bell.

COMMISSIONER FORD: But in six states they already have $6.4 million total?

JUDGE RILEY: Yeah. There's huge sums of money that Illinois Bell is saying is outstanding.

COMMISSIONER FORD: I see.

COMMISSIONER O'CONNELL-DIAZ: So essentially you're waiting on the further briefing on this to give your final recommendation to the Commission?

JUDGE RILEY: Well, as a matter of fact, no. But the statute says in a Section 13-515 case is that once I've issued my decision -- the memo has a maze of deadlines in it. What happens now is that the
Party can request a Commission review of the written decision that I issue, and they have five days to do that. And then any party may file a response three days after that. So the time is about as tight as can get. And 15 days after the issuance of the written decision, which was yesterday, is November 8. That is the absolute final date for Commission action. And the statute also says that the Commission can either adopt this decision or write its own.

COMMISSIONER O'CONNELL-DIAZ: So we have until November 8th to take action in accordance with the statute?

JUDGE RILEY: Right. And I understand there's a Bench Session on the 2nd and another meeting on the 8th.

CHAIRMAN SCOTT: So we'll know by the time of our next session whether or not they filed? They have to file by Halloween.

JUDGE RILEY: Exactly. Yes.

COMMISSIONER ELLIOTT: Judge, I have a question with regard to the multistate issue. The issue
here -- the Commissions in other states were the same
as just being a litigator are free to reach different
conclusions. I guess the end result, assuming that
something of that nature might occur, who is the
ultimate arbiter? Is it the FCC? Because if states
come to different conclusions, is the ultimate
arbiter here the FCC or is it us?

JUDGE RILEY: I think it's -- I'm more inclined
to believe that it would be us because that's going
to determine whether or not the money goes into
escrow.

COMMISSIONER ELLIOTT: If we had two
conflicting decisions by states, does it go to the
courts or does it go to the FCC?

COMMISSIONER O'CONNELL-DIAZ: I think we've got
Mr. Harvey who is the expert on this.

MR. HARVEY: Well, expert is a very generous
assessment. I believe that the matter would be taken
properly to the courts, but that's certainly
something we can find out for you and make some sort
of filing in the case, if that's going to assist the
Commission in reaching their determination.
COMMISSIONER ELLIOTT: It's a 252 decision. It would seem to me ultimately it's FCC if there's disputes among the states. I'm a little confused about that.

MR. HARVEY: Well, the Federal Courts have very often reviewed Section 252.

COMMISSIONER ELLIOTT: For multistate discrepancies?

MR. HARVEY: Well, not even for that, the individual state interpretations of -- terms and conditions of ICAs. I can think of a couple of cases where it's happened here where a litigant has gone to the Federal Court seeking some sort of an interpretation of an interconnection agreement. And in some cases the courts have remanded it back to us to the extent that they can; in other cases, they've decided the relevant issues.

There is also, I think, an election remedies issue here. That the aggrieved party might have any of several avenues open to it to vindicate its perceived rights. And we can certainly do some sort of an analysis for the Commission, if that would
be helpful.

COMMISSIONER ELLIOTT: It would be helpful, I think. I'm just trying to figure out where it goes from here. Not that I disagree with any of the conclusions, but I'm just wondering where it went from here.

MR. HARVEY: I cannot, however, assure you that that will be accomplished in 5 days. We're a little backed up, but we will get right on that.

COMMISSIONER ELLIOTT: Understood. Thank you.

CHAIRMAN SCOTT: Anything further on that issue?

(No response.)

Okay. Thank you, Judge Riley.

JUDGE RILEY: Sure.

CHAIRMAN SCOTT: Item 4 is Docket No. 11-0631. This is PEG Bandwidth's application for a certificates of authority to provide resold and facilities based local and interexchange telecommunications services in Illinois. ALJ Teague recommends entry of an Order granting the requested certificates.
It there any discussion?
(No response.)

Any objections?
(No response.)

Hearing none, the Order is entered.

Item 5 is Docket No. 11-0668. This is Dex One's Petition seeking a waiver for the requirement of Title 83, Section 735.180 sub A, sub I, and sub D of the Administrative Code pursuant to Section 13-513 of the Public Utilities Act. ALJ Riley recommends that the Commission authorize an investigation of the Petition on its own motion based upon Staff's request.

I just should note that this was noticed up in the agenda as being for discussion only, but the request that's being made of us -- or at least the recommendation is that we authorize an investigation of the Petition on our own motion based on Staff's request. So we checked with Judge Wallace and, Judge, you were fine with us being able to take it up as the recommendation is, even though it was noticed up as just being for discussion only
purposes?

JUDGE WALLACE: Yes. The item is properly listed on the agenda for Commission action. The tag lines are something that we as Staff put up and the Commission would not be bound by our tag lines. An example would be that sometimes we recommended not investigating a tariff, but then the Commission goes ahead and investigates the tariff, things like that. So the tag lines are just something that we as staff put on there and I don't believe they bind the Commission at all.

CHAIRMAN SCOTT: Thanks. I just wanted to make sure that that was cleared up in case that was a question that anybody had.

Is there a discussion on this particular issue?

(No response.)

Is there a motion to authorize an investigation of the Petition?

COMMISSIONER ELLIOTT: So moved.

CHAIRMAN SCOTT: Is there a second?

COMMISSIONER O'CONNELL-DIAZ: Second.
CHAIRMAN SCOTT: It's been moved and seconded. All in favor say "aye."

(Chorus of ayes.)

Any opposed?

(No response.)

The vote is 5-0 and the investigation is authorized.

Item 6 is Docket Nos. 11-0059, 11-0141, and 11-0142 consolidated. This item will be held for disposition at a future proceeding, but does anyone have questions for ALJ Teague on this item today?

COMMISSIONER O'CONNELL-DIAZ: The deadline for that is November 17th?

JUDGE TEAGUE: Yes.

CHAIRMAN SCOTT: November 17th on one and November 23rd on the other two.

JUDGE TEAGUE: Yes.

COMMISSIONER O'CONNELL-DIAZ: Thank you.

JUDGE TEAGUE: I just wanted to update the Commission on the number of public comments that have been received in this docket. There have been 19
public comments received regarding Great Northern's
increase, 67 regarding Camelot's and 2 regarding Lake
Holiday's.

COMMISSIONER FORD: Thank you.

CHAIRMAN SCOTT: Thank you.

Any further discussion on that item
today?

(No response.)

Our final item today is Item 7, which
involves pending litigation and we'll go into closed
session to address it.

Is there a motion to go into closed
session?

COMMISSIONER O'CONNELL-DIAZ: So moved.

CHAIRMAN SCOTT: Is there a second?

COMMISSIONER FORD: Second.

CHAIRMAN SCOTT: It's been moved and seconded.

All in favor say "aye."

(Chorus of ayes.)

Any opposed?

(No response.)

The vote is 5-0 and the Commission
will go into closed session. Please let me know when the room is ready in Chicago. (Whereupon at this point pages 19 - 30 of the proceedings are contained in a separate closed transcript.)
CONTINUATION OF PROCEEDINGS

CHAIRMAN SCOTT: In closed session the Commission discussed litigation involving TracFone Wireless.

I would move to grant Staff its requested authority in this matter.

Is there a second?

ACTING COMMISSIONER COLGAN: Second.

CHAIRMAN SCOTT: It's been moved and seconded.

All in favor say "aye."

(Chorus of ayes.)

Any opposed?

(No response.)

The vote is 5-0 and the requested authority is granted.

Judge Wallace, is there any other matters to come before the Commission today?

JUDGE WALLACE: No. That's all, Mr. Chairman.

CHAIRMAN SCOTT: Hearing none, the meeting stands adjourned.

Thank you, Mr. Harvey.

MR. HARVEY: Thank you very much, Mr. Chairman,
and commissioners.

(And those were all the proceedings had.)