Confidential Release

Case Number:
93-487-TP-ALT

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July 30, 2009

Motion for leave

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation.	))))	Case No. 93-487-TP-ALT

MOTION FOR LEAVE TO FILE RESPONSE TO AMERITECH OHIO'S REPLY COMMENTS

Pursuant to Ohio Admin. Code § 4901:1-12, Robert S. Tongren, in his capacity as the Ohio Consumers' Counsel on behalf of the residential telephone customers of Ameritech Ohio, hereby respectfully requests leave to file the attached response to Ameritech Ohio's Reply Comments filed in this docket on June 1, 1999. This request is reasonable and should be granted for the reasons set forth herein.

On May 3, 1999, pursuant to ¶ 13(B) of its alternative regulation (alt. reg.) plan, Ameritech Ohio filed an updated Price Cap Index (PCI) and Group Price Index (GPI) for the price cap mechanism set out in the plan. See Opinion and Order (November 23, 1994) at 67-71. The OCC filed a response to the price cap filing on May 13, 1999, also pursuant to ¶ 13(B). On June 1, Ameritech Ohio filed its Reply Comments.

Ameritech Ohio's alt. reg. plan contains no specific provision for the filing of a response to an Ameritech Ohio reply. In its Reply Comments, however, Ameritech Ohio has put information into the record of this case which, if left unchallenged, may incorrectly form the basis for the Commission's judgment. (The specifics of this information are discussed in the attached proposed response.)

In the OCC's May 17 filing, it was noted that the discussion of issues therein was "based only on the information available within the four corners of Ameritech Ohio's price cap filing. ... The OCC reserves the right to raise additional objections if additional information becomes available in this docket." OCC Response at 14. That information has now become available; the OCC should be allowed to respond.

Further, Ameritech Ohio's reply comments also distort the arguments raised by the OCC in the May 13 response. Here again, the basis for the Commission's resolution of the issues before it will be compromised absent this reply.

WHEREFORE, the OCC requests leave to file the attached response.

Respectfully submitted,

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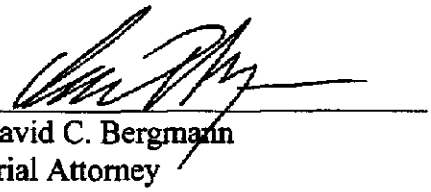

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RESPONSE OF THE OHIO CONSUMERS' COUNSEL TO AMERITECH OHIO'S REPLY COMMENTS

(UNREDACTED VERSION – CONTAINS ALLEGEDLY PROPRIETARY INFORMATION)

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BEFORE
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RESPONSE OF
THE OHIO CONSUMERS' COUNSEL
TO AMERITECH OHIO'S REPLY COMMENTS
(UNREDACTED VERSION – CONTAINS ALLEGEDLY PROPRIETARY INFORMATION)

I. INTRODUCTION: THE "BACK-UP DATA" FOR THE DISCONNECTION DOCKET EXOGENOUS ADJUSTMENT

In the price cap filing, Ameritech Ohio requested recognition of a $5.3 million exogenous adjustment purporting to reflect costs arising from the Commission's decision in the "disconnection docket."[1] The OCC challenged the amount and propriety of this adjustment. See OCC Response at 10-19.

In its reply comments, Ameritech Ohio alleges that

> OCC's challenge goes mainly to what it claims is a lack of support for the proposed adjustment. It should be noted that the Plan of Alternative Regulation contains no directive concerning the substantiation of proposed exogenous adjustments. OCC criticizes what it alleges is a "lack of back-up data" supporting the proposed adjustment. Back-up data, however, was supplied to the OCC and is included with this filing. See Attachment. In

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[1] *In the Matter of the Commission Investigation into the Disconnection of Local Telephone Service for the Nonpayment of Charges Associated with Telephone Services Other Than Local Telephone Service*, Case No. 95-790-TP-COI, Entry on Rehearing (October 16, 1996) (the "disconnection docket" or "95-790"). In this decision, the Commission changed from a policy allowing the disconnection of local service for nonpayment of toll to one that allowed disconnection of toll service only for the carrier to which the customer is in arrears. This requirement has been embodied in the Minimum Telephone Service Standards as Ohio Admin. Code § 4901:1-5-19(A) and (B).

addition, the calculation and explanation of the adjustment is more fully explained in the Attachment.

Ameritech Ohio Reply Comments at 11 (footnote omitted). The one page of "back-up data" now filed with the Reply Comments had been informally provided to the OCC prior to the filing of the OCC's May 13 comments. Given the fact that the information was not a part of the record of the case, the OCC felt constrained not to respond specifically to that information, because it could not have been a basis for the Commission's ruling on the issues raised. See *Tongren v. Pub. Util. Commission*, 85 Ohio St.3d 87 (1999).

Now that the one page of back-up data as well as an additional page and a half of explanatory text are in the record of this proceeding, response to that data is possible and should be allowed. Failure to allow response would seriously prejudice the residential consumers represented by the OCC. As explained herein, the backup data and explanation attached to Ameritech Ohio's reply comments heightens many of the questions raised by the OCC in the May 13 comments about the proposed exogenous adjustment, and, in fact, raises additional questions.[2]

Ameritech Ohio alleges that the OCC "does not challenge the fact that the Commission's change in its disconnection policy meets the ... criteria of the Plan of Alternative Regulation...." Ameritech Ohio Reply Comments at 8-9. The truth is very much to the contrary. The OCC's objections go to the heart of the very first criterion in the Plan: whether "the proposed adjustment ... affect[s] the Company's *annual intrastate*

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[2] Ameritech Ohio is, strictly speaking, correct in its statement that the alt. reg. plan "contains no directives concerning the substantiation of proposed exogenous adjustments." Ameritech Ohio Reply Comments at 11. Yet the plan does allow interested parties to comment on the proposals, and requires the Commission to approve the proposals before they may go into effect. Hence the plan clearly does not contemplate acceptance of the proposals on faith; it is only reasonable to assume that substantiation of questioned proposals should be required.

regulated revenues by at least plus or minus 0.25 percent based on revenues." Ameritech Ohio Reply Comments at 9 (emphasis added). The first question is, what is the proper threshold? As shown in the OCC's Comments -- and not effectively refuted by Ameritech Ohio[3] -- the proper threshold is in the neighborhood of $4 million, rather than the $1.2 million used by Ameritech Ohio. OCC Comments at 6.[4] The second question, then, is whether a properly calculated disconnection docket exogenous adjustment -- as discussed below -- meets that properly-calculated threshold. The OCC submits that this is very much an open question.

In addition, as will be discussed below, the Attachment to Ameritech Ohio's Reply Comments reveals that Ameritech Ohio's adjustment also fails to meet the fourth criterion: that "the exogenous adjustment should be calculated on the basis of the most recent historical data." Ameritech Ohio Reply Comments at 9.

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[3] Ameritech Ohio admits that it "has used revenues under the price cap as the basis for its exogenous adjustment calculation since the beginning of the alternative regulation plan." Ameritech Ohio Reply Comments at 2-3. Yet Ameritech Ohio fails even to attempt to explain how its use of "revenues under the price cap" can be reconciled with the fact that the explicit language of the Plan (and of the stipulation to which the Plan was attached) require the use of "intrastate regulated revenues" in the calculation of the exogenous threshold. Alt. Reg. Plan, ¶ 13.D.; Stipulation, ¶ II.19. Ameritech Ohio criticizes the OCC's paraphrase of "intrastate regulated revenues" as "revenues from intrastate services that are regulated by the Commission" because that "would include access revenues and other revenues from sources outside the plan" (Ameritech Ohio Reply Comments at 4), but Ameritech Ohio fails to explain how access revenues and those other revenues are *not* "intrastate regulated revenues." Fundamentally, Ameritech Ohio fails to challenge the OCC's statement that "'intrastate regulated revenues' are different from 'intrastate revenues subject to price cap.'" OCC Response at 4.

Ameritech Ohio also states that it "makes sense that an exogenous adjustment in a price cap plan would take into consideration only the revenues subject to the price cap plan." Ameritech Ohio Reply Comments at 3. Actually, for the purpose of setting an exogenous adjustment *threshold*, the use of either "intrastate regulated revenues" or "revenues subject to the price cap" would make sense, *depending on the level of impact on the company sought to be reflected in the threshold.* The use of "intrastate regulated revenues" obviously creates a higher threshold for exogenous adjustments. Again, what Ameritech Ohio cannot get around is that the bargained-for Stipulation and Plan, which Ameritech Ohio signed and the Commission approved, both require the use of "intrastate regulated revenues."

[4] Notably, although Ameritech Ohio challenges the OCC's use of "revenues from intrastate services that are regulated by the Commission" as the basis for calculating the threshold, Ameritech Ohio does not dispute that the threshold produced would be $4.156 million.

II. AMERITECH OHIO'S "BACK-UP DATA" HEIGHTENS THE CONCERNS RAISED BY THE OCC.

Ameritech Ohio proposed what was identified on its Exhibit 1 as a "Disconnection Docket" exogenous adjustment. The adjustment was different for residence customers than for nonresidence customers, a 1.726474% increase to the PCI for residence customers and a 0.069610% increase to the PCI for nonresidence customers. Ameritech Ohio does not dispute that absent the 1.726474% upward adjustment caused by the disconnection docket claim, under the price cap mechanism residence rates would decrease substantially more than the $2.6 million proposed by Ameritech Ohio.[5]

In the OCC's comments, the following concerns were raised about the disconnection docket exogenous adjustment:

- The lack of explanation should in itself be cause for rejection.
- Ameritech Ohio has not adequately demonstrated that the costs are caused by the disconnection docket.
- One-time costs should be amortized over a number of years.
- The dePICing adjustment is inconsistently applied.
- The differences between last year's filing and this year's.

OCC Response at 12-13. By providing the "back-up data," Ameritech Ohio has attempted -- albeit unsuccessfully -- to cure the first problem. Except for the "dePICing adjustment" issue, however, Ameritech Ohio's back-up data does not alleviate the OCC's concerns. In fact, the back up data heightens those concerns.

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[5] If the disconnection docket adjustment is eliminated, and the property tax adjustment is eliminated as well (as it would be under a properly calculated threshold), the PCI calculation would combine the GDPPI (+1.418440%), the productivity offset (-3.000000%), and the service quality adjustment (-0.351240%), for a total change of -1.9328%. That change applied to the $298,794,608 residential revenues subject to the price cap yields a decrease of $5,775,102, rather than the $2,637,736 decrease set out on Exhibit 1 of the May 3, 1999 price cap filing.

III. WHAT AMERITECH OHIO'S ORIGINAL FILING LISTED AS "BILL SEPARATIONS COSTS" ARE NOW REVEALED TO INCLUDE COSTS OF ALLEGED INCREASED ACCOUNTS RECEIVABLE.

As noted in the OCC's Comments (at 11), it originally appeared that the exogenous costs at issue consisted of the following:

- For residence customers only, $1.1 million in one-time "bill separations costs" and $3.85 million in "on-going annual bill separations costs"; and
- For all customers, $341,214 in one-time "de-PIC costs."

From the line name on Attachment 3 to Ameritech Ohio's original filing ("bill separations costs"), it appeared that there were no costs of increased accounts receivable resulting from the disconnection docket included in the $3.8 million in ongoing costs. The Attachment to Ameritech Ohio's Reply Comments now confirms that that appearance was deceiving.

We now are informed that "the Company has referred **$17,237,400** in separated deniable accounts to an outside collection agency." Attachment to Ameritech Ohio Reply Comments (hereafter Ameritech Ohio Attachment) at [1].[6] This results in a collection agency fee of **$1,137,700**. *Id.* Further, of the amounts referred to the collection agency, **$1,379,000** is eventually recorded as an increase to the Company's bad debt. *Id.* at [2]. These last two amounts, along with **$936,100** in manual bill separations costs and **$397,100** in "cost of capital"[7], become the

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[6] Both the text Attachment and the one-page calculation contain dollar figures that Ameritech Ohio claims are confidential. See Ameritech Ohio Motion for a Protective Order. The OCC has been given access to these figures pursuant to a continuing protective agreement. Although the OCC does not agree that this information should be confidential, it is treated as such herein, and the OCC will file an unredacted version of this pleading under seal as well as a redacted version for the public record. It should be noted that only the specific dollar figures are claimed to be confidential; the explanatory text appears in the public version of Ameritech Ohio's Reply Comments.

[7] Ameritech Ohio's inclusion of cost of capital is discussed below.

$3,850,000 in "on-going annual bill separations costs" that appear in the exogenous adjustment impact calculation set forth in Attachment 3 to Ameritech Ohio's May 3, 1999 filing.

IV. AMERITECH OHIO HAS NOT ADEQUATELY DEMONSTRATED THAT THESE ACCOUNTS RECEIVABLE COSTS ARE CAUSED BY THE 95-790 DOCKET.

In the OCC's Response (at 15), it was stated that if accounts receivable were included in the $3.8 million, then Ameritech Ohio should be required to show that any increase in accounts receivable was directly caused by the change in disconnection policy. Clearly, the mere fact that an expense category increased after the 95-790 policy was adopted does not mean that the 95-790 policy caused the increase. Ameritech Ohio has alleged a causal relationship between the 95-790 policy and these expenses, but has failed to provide any demonstration that the expenses in the accounts in question actually increased, or actually increased as a result of the disconnection docket.

Ameritech Ohio alleges that "[o]ne direct consequence of the Commission's order was the rise in customer accounts receivable." Ameritech Ohio Attachment at [1]. No quantification of this increase is provided. Further, in its reply comments, Ameritech Ohio makes no attempt to reconcile this claim with the following facts put forth in the OCC's Response: First, according to Ameritech Ohio's PUCO annual report for the year 1998, accounts receivable declined by $4 million from the beginning of 1998 to the end of the year. OCC Response at 9, n.8. Further, Ameritech Ohio's own submission in the 96-1175 docket showed a decrease in Ameritech Ohio's average past due bill in 1998, the first full year that the disconnection policy was in effect. Finally, as reported in the Ohio Telecommunication Industry Association's Initial Comments in 95-1175, Ameritech

Ohio had a 27.5% increase in write offs between 1996 and 1997, but in 1998 write offs declined, resulting in a net increase of only 4% from 1996 to 1998.[8]

The ultimate source for this part of the exogenous adjustment is the **$17 million** in separated non-deniable accounts that were referred to an outside collection agency. Clearly, Ameritech Ohio referred accounts to a collection agency in previous years. (Otherwise, how would it know that "[h]istorically, **20%** of receivable amounts referred to an outside collection agency are ultimately collected...."? Ameritech Ohio Attachment at [1].) Ameritech Ohio fails to indicate how the **$17 million** compares to amounts from previous years.[9]

Unless Ameritech Ohio can show that the entire **$17 million** in fact represents an increase in accounts receivable since the adoption of the disconnection policy, and unless Ameritech Ohio can show that this entire increase is in fact attributable to the Commission's disconnection policy, then it will not have shown that the accounts receivable cost is eligible for consideration as part of an exogenous adjustment under the alt. reg. plan. Based on the information provided with its May 3, 1999 filing and its Reply Comments, Ameritech Ohio has not yet made the needed demonstration.

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[8] Ameritech Ohio response to this last statement is a statement that the OCC's reference to a decline is "misguided," repeating that, contrary to this publicly-filed information, it "has ... seen its uncollectibles, receivables, and the amounts written off rise." Ameritech Ohio Reply Comments at 13. Unfortunately, Ameritech Ohio's back up data gives no hint of what the truth might actually be.

[9] In fact, there is no definitive demonstration of the time period over which the accounts accumulated and were turned over to the collection agency. Given the problems Ameritech Ohio seems to have with attributing costs on an annual basis (see below), that subject deserves inquiry by the Commission.

V. ONE-TIME START-UP COSTS MUST BE AMORTIZED.

Ameritech Ohio included $1,100,620 in one-time bill separations costs for residence customers and $341,214 in one-time dePICing costs for all customers in its adjustment. Ameritech Ohio May 3, 1999 filing, Attachment 3. The OCC argued that one-time "start-up" costs are non-recurring costs that should not be recovered in a single year. OCC Response at 16. Ameritech Ohio's back-up data shows that the bulk of these one-time costs are bill separation "programming development costs" (**$737,000**) and de-PIC "ACIS programming costs" (**$214,000**). Ameritech Ohio Attachment at [3]. The fact that these are the costs of developing programs that will be used over a number of years reinforces the OCC's position that these costs should be amortized.

Ameritech Ohio's entire reply to the OCC's position is that amortization "is an old concept from the rate of return days and one which has no application in this context." Ameritech Ohio Reply Comments at 12. Ameritech Ohio is wrong: Amortization is a standard accounting practice, designed to properly attribute expenses and revenues to the entire period over which they should be considered. For instance, in November 1997 -- since the approval of the Ameritech Ohio alt. reg. plan -- the Commission required all large Ohio LECs, including Ameritech Ohio, to amortize the embedded balances of certain plant items.[10] For the purpose of the price cap, it is inherently unfair to load all of the start-up costs into a single year in an attempt to meet

[10] *In the Matter of the Amortization of the Embedded Balance of Certain Plant Items Costing Under $2,000 for Telephone Companies*, Case No. 97-443-TP-ORD, Entry (November 20, 1997). The Commission was following on the intrastate side the lead of the FCC on the interstate side. As the Commission knows, most large carriers have been exempt from rate of return regulation on the interstate side since well before the adoption of Ameritech Ohio's alt. reg. plan.

the artificial exogenous event threshold.[11] Ameritech Ohio has not shown that the amortization concept should be abandoned in this context.

VI. AMERITECH OHIO'S BACK-UP DATA SHOWS THAT THE BULK OF THE ONE-TIME COSTS WERE NOT ACCRUED IN 1998 AND HENCE SHOULD NOT BE INCLUDED IN THIS EXOGENOUS ADJUSTMENT.

The back-up data shows that the $1,100,620 in one-time bill separations costs included in the exogenous adjustment for 1998 (May 3, 1999 filing, Attachment 3) represents the sum of **$113,500** "Cost of Capital" plus **$250,000** "Training and M&P [Methods and Practices] Costs" plus **$86,000** "Programming Development Costs" for 1998 *plus **$651,100** in "Programming Development Costs from 1999."* Ameritech Ohio Attachment at [3] (emphasis added).

The fact that most of these costs were incurred in 1999 is confirmed by the narrative of Ameritech Ohio's Attachment: "As shown on the attached sheet, the Company incurred approximately **$86,000** in programming costs.... In 1999, the company *will incur* **$1, 953,300** in programming and technology support costs..." *Id.* at [1]; emphasis added. As shown on that attached sheet, the **$1,953,000** represents the sum of **$1,302,200** 1999 "future" costs plus the same **$651,100** 1999 "to date" costs included in the one time costs that were put into the *1998* exogenous adjustment. This is clearly erroneous.

Ameritech Ohio's May 3, 1999 price cap filing includes 1) the GDPPI for 1998 (Attachment 1); 2) the Service Quality factor for 1998 (Attachment 2); 3) the 1998 Property Tax Impact (Attachment 3); 4) 1998 Total Company Revenues (*id.*); 5) an

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[11] The OCC suggested a 5-year amortization period for these expenses. OCC Response at 16.

exogenous threshold calculated based on 1998 Intrastate revenues Subject to Price Cap (*id.*); and 6) changes in tariff rates from October 16, 1998 (Exhibit 2). There is nothing in the price cap plan that allows costs incurred in 1999 to be considered for the 1998 price cap. Ameritech Ohio will have to wait to attempt to reflect its 1999 costs in an exogenous adjustment in the May 2000 filing.[12]

VII. INCLUSION OF CAPITAL COSTS IS INAPPROPRIATE

Ameritech Ohio has included in both the one-time bill separations costs and the ongoing annual bill separations costs a component of "cost of capital at 11.5%." Ameritech Ohio Attachment at [3].[13] This amounts to **$113,500** on the one-time side and **$397,100** on the ongoing side. This component is inappropriate, for a number of reasons.

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[12] On a related note, the OCC raised the issue of whether there was a duplication between the $5 million in 95-790 costs alleged in Ameritech Ohio's price cap filing in May 1998 and the $5.3 million in this year's. OCC Response at 17-18. Ameritech Ohio's reply was that "[t]his year ... the Company has elected to actually take the exogenous adjustment for which notice was given last year." Ameritech Ohio Reply Comments at 9-10. The notice given last year was notice of an adjustment for last year's price cap, as explained in Ameritech Ohio's May 29, 1998 Reply Comments regarding last year's filing:

> OCC's claim ignores the fact that the Company could fully justify its exogenous adjustment now, but has chosen not to.... Just as the Commission has reserved judgment on the contested issues from last year's price cap filing, the Commission can, and should, reserve judgment on the propriety of the proposed exogenous adjustment....
>
> Such action will not result in a "mismatch" that adversely impacts the annual nature of the price cap adjustments, as claimed by the OCC. OCC, p. 6. *No "mismatch" will result from including an adjustment that is derived from the same period reflected in the current price cap adjustment.* Specifically, the increase in the Company's accounts receivable, *as measured year-end 1997 over year-end 1996*, formed the basis for the proposed exogenous adjustment.

Ameritech Ohio Reply Comments at 2-3 (emphasis added). Ameritech Ohio's current actions should foreclose the Company from "electing" to seek an exogenous adjustment to last year's filing. Further, given Ameritech Ohio's specific statement that last year's $5 million adjustment was based on increased accounts receivable, and the fact that this year's $5.3 million adjustment is based on increased accounts receivable *in addition to other costs*, there is at least an implication that accounts receivable have decreased since 1997.

[13] It is unclear why Ameritech Ohio has not also added a cost of capital component to the one-time dePICing costs.

In the first place, it is highly unlikely that Ameritech Ohio had to approach the capital markets to fund the **$4.7 million** in one-time and ongoing costs identified in the filing. Ameritech Ohio's total revenue for 1998 was $2.3 billion.[14]

Second, to the extent that the costs include programming development costs that might in other circumstances be capitalized, Ameritech Ohio is thus seeking both a return of and a return on those costs. Although Ameritech Ohio may argue that preventing such duplication is another vestige of rate of return regulation (like amortization of one-time costs), Ameritech Ohio has provided no reason why Ameritech Ohio's customers should now be burdened with such costs.[15]

It should also be noted that, if Ameritech Ohio's customers are required to pay Ameritech Ohio's cost of capital component for the Company's increased expenses due to the disconnection docket, then Ameritech Ohio should be required to add a cost of capital component to the property tax exogenous adjustment. Alternatively, Ameritech Ohio should be required to show why such an adjustment would not be appropriate.

Finally, Ameritech Ohio makes no showing that its cost of capital is in fact 11.5%. In Ameritech Ohio's TELRIC case -- the most recent determination of Ameritech Ohio cost of capital, its cost of capital was found to be 9.74%. See *In the Matter of the Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local*

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[14] Given Ameritech Ohio's earnings, as discussed elsewhere, this is even more unlikely.

[15] If, as argued by the OCC, the one-time costs cited by Ameritech Ohio are amortized over a period of years, the OCC would have no objection to include a cost of capital for the unamortized balance, assuming that the total met a properly calculated exogenous threshold.

Telephone Traffic, Case No. 96-922-TP-COI, Entry on Rehearing (September 18, 1997) at 22-24.

VIII. THE IMPACT OF THE OCC'S ISSUES ON THE EXOGENOUS ADJUSTMENT

As presented by the OCC, the proper exogenous adjustment threshold is $4.156 million. See OCC Response at 6. As presented by Ameritech Ohio, the disconnection docket exogenous adjustment of $5.292 million would meet that threshold. Yet as demonstrated herein, there are substantial questions about the correctness of many components of the $5.3 million figure represented by the adjustment.

The OCC will accept at this point that Ameritech Ohio's **$936,100** ongoing "manual efforts to separate bills" is correct.[16] If Ameritech Ohio were able to show that the entirety of its **$2,516,700** ongoing "accounts receivable-related" costs were in fact caused by the disconnection docket, then a calculation of the impact of the disconnection docket would be as follows:

	Amount
On-going cost element	
Manual efforts	**$936,100**
Accounts receivable	**$2,516,700**
Sub-total	**$3,452,800**

[16] Although there remain questions about why no such costs are presented for non-residence customers.

One-time costs accrued in 1998	
Bill separation programming development	**$86,000**
Training and M&P costs[17]	**$250,000**
DePIC costs	**$341,300**
Sub-total one time costs	**$677,300**
Five year amortization	**$135,460**
Return on unamortized balance @ 9.74%	**$55,775**
Total for one-time costs	**$188,235**
Total for on-going and one-time costs	**$3,641,035**

Under this formulation, Ameritech Ohio's disconnection docket exogenous adjustment does not meet the threshold. Again, this assumes that the entirety of Ameritech Ohio's "accounts receivable" expense could be shown to have been caused by the disconnection docket, which appears to be a major assumption. Under these circumstances, the Commission must examine Ameritech Ohio's proposals very carefully.

Before the "back-up data" was placed in the record, the OCC had indicated that a hearing might be needed to resolve the issues raised by the disconnection docket exogenous adjustment. OCC Response at 19. Ameritech Ohio's reply was that its alt. reg. plan does not provide for a hearing, and that "the Commission has, to date, operated on

[17] This assumes that all of these costs were in fact accrued in 1998.

the basis of the information the Company has provided to its Staff." Ameritech Ohio Reply Comments at 14. To date, of course, there has never been a challenge to the details of an Ameritech Ohio proposal for a price cap adjustment.[18] Given the many and complex concerns raised by the OCC here, it is difficult to see how they could be resolved without a hearing.

IX. CONCLUSION

At this point, Ameritech Ohio's price cap filing presents three issues that the Commission must carefully consider:

1. Whether Ameritech Ohio should be required to use the exogenous adjustment threshold specifically set out in its alt. reg. plan (0.25% of *intrastate regulated revenues*) for this year.
2. Whether, if the exogenous adjustment is corrected this year, Ameritech Ohio should be allowed to recalculate its price cap for previous years.
3. Whether this year's disconnection docket exogenous adjustment meets a properly-calculated threshold.

As shown herein and in the OCC's May 13, 1999 Response, there is no basis for the $1.22 million threshold Ameritech Ohio has used. A proper threshold for this year would be more than $4 million. Using such a threshold, it is highly unlikely that a properly-

[18] In previous years, the OCC's concerns went to the concept of the adjustments made by Ameritech Ohio; these concerns could be addressed through pleadings. Last year's disconnection docket exogenous adjustment never got far enough to require inquiry into the details.

calculated disconnection docket exogenous adjustment would qualify.[19] In any event, the Commission must examine the proposed adjustment in detail.

That leaves the question of recalculation. In the OCC's Response, the following were cited as reasons why recalculation should not be allowed:

- The magnitude of the error -- which operated to the detriment of Ameritech Ohio -- was such that prudent business practices would have uncovered it.
- The level of Ameritech Ohio's earnings during the plan shows that Ameritech Ohio has no need for the revenues that would be provided by the recalculation.
- Allowing recalculation would add insult to injury given Ameritech Ohio's continued decline in service quality.
- In a competitive market, such as is sought to be replicated by the price cap mechanism, a firm would be prevented by the market from reaching back to correct such an error.

OCC Response at 8-10.

Ameritech Ohio's reply shows that the OCC's position was correct. In the first place, Ameritech Ohio attacks the OCC's motives for bringing this issue up now, because consumers have benefited from Ameritech Ohio's mistake in prior years. Ameritech Ohio Reply Comments at 2. As explained in the OCC's Response, the error was in fact not identified until this year -- principally because the OCC had no reason to suspect that

[19] The OCC acknowledges that the property tax exogenous adjustment would also not qualify.

Ameritech Ohio would knowingly take an approach that allowed it to collect less revenue than it might otherwise have.[20]

Ameritech Ohio argues that, in alleging that recalculating the price cap would be retroactive ratemaking (a phrase mentioned once in the OCC's pleading), the OCC "is wrong on the law." Ameritech Ohio Reply Comments at 8. Yet Ameritech Ohio cites neither statute nor court or Commission case law in support of its proposition. Ameritech Ohio says that "the Company would clearly be permitted to recalculate its PCI and bring that calculation forward." *Id.* Especially given the lack of precedent in this area, Ameritech Ohio would be able to recalculate its PCI only if the Commission allowed it to. As noted, the OCC has provided a number of reasons why the Company should not be permitted to recalculate.[21]

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[20] The OCC acknowledges that in estimating the impact of the previous years' adjustment the EAS exogenous adjustment was double-counted. See Ameritech Ohio Reply Comments at 4-5. Yet Ameritech Ohio is also in error in characterizing the impact of the exogenous adjustments as "cumulative rate reductions" of $21.8 million. *Id.* at 5. In the first place, although the cumulative revenue impact on Ameritech Ohio over the years of the price cap plan may have been in that neighborhood, this was not the result of "cumulative rate reductions." The approximately $3 million property tax adjustment in the 1996 filing reduced rates by $3 million in 1996; this reduction remained in effect in 1997 and 1998. Thus this adjustment has resulted in Ameritech Ohio collecting $9 million less in revenues over the three years than it would have otherwise. The $3.2 million property tax adjustment in the 1997 filing reduced revenues by $3.2 million 1997; that reduction remained in effect in 1998, resulting in Ameritech Ohio collecting $6.4 million less from consumers than it would have otherwise. Whether the 1998 filing property tax decrease was $3.2 million or $2.7 million (see Ameritech Ohio Reply Comments at 5), this reduced revenues by about $3 million. Thus over the past three years Ameritech Ohio has collected some $18.4 million less in revenues due to these exogenous adjustments than it would have otherwise. These are *not* "cumulative rate reductions."

[21] Among the strangest Ameritech Ohio arguments is that the OCC erred "when it says that the net effect of changing the threshold in the manner it suggests would be 'an upward adjustment to the GPI.' OCC, p. 7. Rather, the effect would be an upward adjustment of the PCI, a different factor in the price cap formula." Ameritech Ohio Reply Comments at 3. As the Commission knows, the price cap mechanism allows Ameritech Ohio pricing flexibility within limits set by the PCI. Each year, the GPI -- a number that combines the base line units and prices of many of the services sold by Ameritech Ohio -- must be shown to be at or below the PCI. If the GPI is above the PCI, rates must be reduced to bring the GPI below the PCI. Hence if there is an upward adjustment to the PCI, the "net effect" would be that Ameritech Ohio would be allowed to increase the GPI.

Ameritech Ohio has failed to show how its error was a reasonable one. On the question of its earnings during the price cap -- and thus its need for these revenues -- the total of Ameritech Ohio's response is that "earnings are not relevant to any issue presented here." *Id.* at 7. The Illinois Commerce Commission addressed a similar question for Ameritech Ohio's sister company, holding that a "particularly important consideration is whether rates resulting from the price regulation formula would not be just and reasonable without inclusion of the exogenous adjustment." *Re Illinois Bell Telephone Company*, Case No. 95-0182, Order (June 21, 1995), 1995 Ill. PUC LEXIS 404, *7 (a copy is attached hereto). Given the level of Ameritech Ohio's earnings, it cannot argue that the rates would be unreasonably low absent the recalculation of the exogenous adjustment.

In reply to the OCC's argument that allowing rate increases would be particularly unreasonable in the face of Ameritech Ohio's declining service quality, Ameritech Ohio apparently takes the position that the decline in the price cap SQF is the fault of the Commission's current MTSS. Ameritech Ohio Reply Comments at 6. Supposedly because the current standards are different from the MTSS that were in effect when the alt. reg. plan was adopted, "[t]his ... does not reflect a decline in service quality under the current MTSS." *Id.* Ameritech Ohio's "apples and oranges" argument (*id.*) cannot obscure the fact that *under the service quality standards included in the price cap plan*, Ameritech Ohio's service continues to decline.[22] Enhancing Ameritech Ohio's earnings

[22] Ameritech Ohio claims that "the current standards for business office speed-of-answer differ from the prior standard, *and result in* the SQF declining by nearly the maximum amount for these SQF components." *Id.* The claim of cause and effect is absurd: The previous standard was that 90% of all calls to the business office had to be answered within 20 seconds. Former Ohio Admin. Code § 4901:1-5-22(D)(1)(c). The current standard is that the average speed of answer for calls to the business office shall

in the fashion effectuated by allowing a retroactive adjustment to the GPI is clearly not in the public interest.

Finally, Ameritech Ohio claims that the OCC erred in arguing that service providers in a competitive market cannot raise their prices based on occurrences or errors from previous years, because "[s]uch providers can certainly recover the costs of those occurrences or error to the extent market-based prices allow them to do so." Ameritech Ohio Reply Comments at 8. Of course, in a truly competitive market such opportunities are kept to a minimum due to the continuing downward pressure of competition on costs and prices. Unfortunately, competition in Ameritech Ohio's market -- particularly for residential customers -- is still virtually non-existent. The Commission should be reluctant to allow recalculation of the price cap formula to accomplish what a truly competitive market would not permit.

As conclusively demonstrated herein, the entirety of Ameritech Ohio's exogenous adjustment is open to question. Even with the net upward exogenous adjustment proposed for the residence class by Ameritech Ohio in its May 3, 1999 filing, however, the net result of the price cap for the residence service is a reduction. That reduction should be permitted to go into effect as scheduled July 1, 1999, with the clear understanding that additional reductions may be in order.

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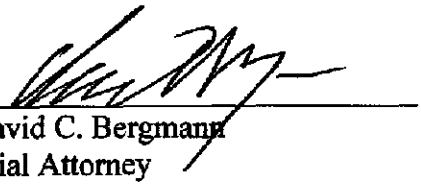
not exceed 60 seconds. If Ameritech Ohio met the previous standard, it would be very difficult to fail to meet the current standard. Further, the reference to the "business office speed of answer" standard being close to the maximum cannot obscure the fact that it is the out of service cleared within 24 hours standard in the price cap that is *at* the maximum. Ameritech Ohio May 3, 1999 filing, Attachment 2. Service

Respectfully submitted,

ROBERT S. TONGREN
CONSUMERS' COUNSEL



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provided within 5 days and installation appointments met are also closer to the maximum than business office speed of answer. *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Leave to file Response and Response of the Ohio Consumers' Counsel to Ameritech Ohio's Reply Comments (Unredacted Version -- Contains Allegedly Proprietary Information) was served by first class mail, postage prepaid, or hand-delivered on the parties identified below this 8th day of June, 1999.

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2ND OPINION of Level 1 printed in FULL format.

Illinois Bell Telephone Company: Annual Rate Filing for Noncompetitive Services Under an Alternative Form of Regulation

95-0182

ILLINOIS COMMERCE COMMISSION

1995 Ill. PUC LEXIS 404

June 21, 1995

OPINION:
[*1]

ORDER

By the Commission:

On October 11, 1994, pursuant to Section 13-506.1 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et. seq., the Illinois Commerce Commission ("Commission") entered an Order in Dockets 92-0448/93-0239 Consolidated ("Order"), which established an alternative form of regulation for the noncompetitive services of Illinois Bell Telephone Company ("Illinois Bell"). Under the terms of the alternative regulation plan adopted, rates for noncompetitive services are tied to an index. Illinois Bell is required to make an annual filing on, or before, April 1st of each year which, inter alia, proposes for Commission approval, a Price Cap Index ("PCI") to be effective on July 1st of the same year. On March 31, 1995, Illinois Bell submitted its First Annual Rate Filing in compliance with the Order. For administrative convenience, Illinois Bell was requested to refile its proposal in a separate docket, and this proceeding was subsequently initiated. Municipalities received notice of the filing. The Commission takes administrative notice of the Order and record in Dockets 92-0448/93-0239.

Pursuant to notice as required by law and the rules of the Commission, a [*2] status hearing was held before a duly authorized hearing examiner of the Commission on May 10, 1995 at the Commission's offices in Chicago, Illinois. Petitioners to Intervene filed on behalf of People of Illinois through the Attorney General of Illinois ("AG"), the Citizens Utility Board ("CUB"), People of Cook County through the State's Attorney of Cook County ("Cook"), AT&T Communications of Illinois, Inc. ("AT&T"), MCI, and Staff were granted by the Hearing Examiner. Comments to the Annual Rate Filing were filed by Staff, AG, CUB, and AT&T. Reply Comments were filed by Illinois Bell. A Hearing Examiner's Proposed Order was served on the parties. Exceptions were filed by Illinois Bell, Staff, AT&T, CUB and AG. The Commission has considered those exceptions, and changes to the Proposed Order have been incorporated herein.

Price Cap Index Calculation

Illinois Bell proposes that the PCI to be used for the twelve month period July, 1995 through June 1996 be calculated as follows:

PCI = GDPPI - (4.3% + Q +/- Z)
PCI = 2.92% - (4.3% + Q + .22)

PCI = 2.92% - (4.08)

PCI = (1.16%)

Once the percentage change, negative 1.16%, is subtracted from 100, the resulting 1995-1996 PCI under [*3] Illinois Bell's proposal is 98.84.

As an initial matter, both Staff and the AG noted that Illinois Bell's calculation was mathematically incorrect. In its Reply, Illinois Bell acknowledged that the second equation above contained a typographical error in that the proposed Z factor should have been shown as -.22.

Staff noted that Illinois Bell's presentation did not conform to the mathematical format approved in the Order. Staff maintained that the approach Illinois Bell used had no impact this year, but that it could be problematic in the future because it does not capture the compounding effect which occurs with use of the approved methodology. In its Reply, Illinois Bell stated that it used the percentage approach because it was simpler and made no difference in the final outcome. It had no intention to use the approach in subsequent annual filings.

Conclusion

The Commission reaffirms that the mathematical approach adopted in the Order should be used in future filings:

Price Cap Index (PCI) for the current year = PCI of Prior Year times [1 + (% Change in the GDPPI) / 100 - .043 +/- Z + Q]

No adjustment to Illinois Bell's filing with respect to this issue is necessary. [*4]

Exogenous Factor - "Z"

Illinois Bell included in its annual rate filing an exogenous change or, "Z" factor, based on changes in individual intrastate jurisdictional factors for operating expenses, (excluding depreciation) between its 1993 year-to-date ("YTD") separations report and its 1994 separations report.

Staff, AG and CUB maintain that the jurisdictional changes reported by Illinois Bell reflect only normal business fluctuations and do not qualify for exogenous treatment. They are neither extraordinary nor "mandated separations changes".

Staff notes that the separations procedures set forth in 47 CFR Part 36 are designed primarily for the allocation of property costs, revenues, expenses, taxes and reserves between state and interstate jurisdictions. Illinois Bell prepares YTD separations reports on a monthly basis. The jurisdictional factors shown on these reports fluctuate each month. Such variations are normal and expected in the telecommunications industry. No specific actions were taken by

the FCC or other bodies that affected jurisdictional separations during 1994.

Staff and CUB further contend that Illinois Bell has not identified all changes in intrastate jurisdictional [*5] factors. Staff maintains that there may have been changes in revenue, depreciation, rate base and taxes. CUB identifies plant accounts. Staff also argues that none of the individual operating expense categories exceed the $ 3 million threshold.

In response, Illinois Bell disagrees that its separations changes do not qualify for exogenous treatment because they are normal fluctuations and not mandated methodological changes implemented as part of separations reform. It argues that nothing in the Commission's Order requires that exogenous changes meet such a strict standard. Illinois Bell maintains that the Order established the criteria for exogenous treatment. To qualify the costs must: (1) be outside the Company's control; (2) be of a character that would not be picked up in an economy-wide inflation factor; (3) be quantifiable and verifiable; and (4) have an impact of at least $ 3 million. Order at 63-64. Illinois Bell argues that its proposed exogenous adjustment satisfies the four criteria. Furthermore, all separations changes are "mandated" in that they are required by operation of the FCC's rules.

With respect to the argument that not all separations changes have been identified, [*6] Illinois Bell maintains that changes in rate base and tax separations factors did not have the prescribed $ 3 million financial effect; the revenue category is inapplicable because revenues are directly assigned and not subject to the separations process; and depreciation rates are no longer outside its control. It argues that absent a factual demonstration by Staff and CUB that other offsetting separations changes met the Commission's criteria, its proposed adjustment should be adopted.

Illinois Bell also argues that there is no logical basis for applying the $ 3 million test on an individual expense category basis as Staff suggests. Total operating expenses excluding depreciation is a recognized key category of jurisdictional separations data and the changes are appropriately considered as a whole. A proper exogenous change should not be avoided by simply disaggregating costs down to a level where none of the individual components would qualify.

Conclusion

It is apparent that there is a need for further clarification of the exogenous factor in the price regulation mechanism. The inclusion of the exogenous factor in the PCI formula was merely a precaution intended to reflect [*7] the fact that price regulation is necessarily a simplified approach to ratemaking. We recognized that a formula might not properly reflect unusual and/or unexpected events and situations, and therefore, rates which were based on a rigid formula could, under certain circumstances, no longer be considered just and reasonable.

The criteria identified in the Order are not intended to be the sole criteria for approval of an exogenous change. They can be considered "screening factors", i.e., the failure of a proposed exogenous adjustment to meet any one of the criteria is sufficient to preclude its acceptance. The Commission anticipates that exogenous factor treatment will be rare, and in most cases, event-driven. A particularly important consideration is whether rates resulting from the price

regulation formula would not be just and reasonable without inclusion of the exogenous adjustment. In all cases, the party proposing an exogenous adjustment will have the burden of demonstrating its appropriateness.

With respect to Illinois Bell's proposal, we reject the inclusion of a .22% exogenous change in the PCI calculation. There is little support for a conclusion that the adjustment is required [*8] to ensure that rates are just and reasonable. Indeed, the support for the adjustment included in Illinois Bell's filing is seriously deficient. Simply providing a worksheet calculation without any narrative description or justification for the proposal is inadequate, now and for future filings. See Order, p. 92, item (g). Furthermore, there is no specific event underlying the proposed exogenous adjustment, nor is there anything unique about the separations process or its results in 1994. The calculations are merely the result of the ongoing separations process, and reflect ordinary activities in the marketplace. If Illinois Bell's proposal was approved, there would undoubtedly be a separations adjustment every year as new calculations are made. If we had intended that the impact of ordinary separations calculations regularly be reflected in the price regulation formula, we would have included a distinct separations factor in that formula. No such factor was proposed or adopted.

The reference in the Order to "mandated jurisdictional separations changes" refers to an adjustment arising from a qualitative change in the separations methodology or process, not merely the periodic quantitative [*9] changes in the separations results. We note that this conclusion is also consistent with the FCC's approach regarding the relationship between the separations process and price regulation. It will be necessary to recalculate the PCI without the inclusion of Illinois Bell's proposed exogenous adjustment.

Payphones

CUB maintains that Illinois Bell failed to implement its commitment to adopt full exogenous treatment for payphone rate increases required to comply with the cross-subsidy provisions of Section 13-507 of the Act.

In its May 17, 1995 Reply Comments, Illinois Bell argued that there is no basis for an exogenous adjustment relative to the reclassification of payphone service because the Commission has yet to resolve Docket 88-0412.

Conclusion

The Commission takes administrative notice of the fact that on June 7, 1995 it entered an Order in Docket 88-0412 which concluded that with the reclassification of payphone services, Illinois Bell's aggregate competitive services failed to pass the aggregate revenue test required under Section 13-507 of the Act. The amount of the Section 13-507 shortfall was determined to be $ 27 million, but because of the agreement between [*10] Illinois Bell and the ICPA whereby Illinois Bell has agreed to pay ICPA members at least a 40% commission from operator services sold by Illinois Bell through the use of those members' payphones, the shortfall will, for the purposes of calculating an exogenous change factor in Illinois Bell's annual filing, be $ 16.5 million. In accordance with its commitment in Docket 92-0448/93-0239, Illinois Bell is directed to reflect this one-time shortfall as an exogenous change to the price cap index. In its Exceptions, Staff stated that it supports the adjustment but

expressed its concern about incorporating the effects of events that occurred after the end of the previous calendar year. The Commission agrees. In the future, unless otherwise addressed in the Order in Dockets 92-0448/93-0239, exogenous factor treatment of events occurring after the end of the previous calendar year will not be considered until the next annual filing.

Service Quality

In its annual filing, Illinois Bell did not include an adjustment for service quality based upon calendar year 1994 service quality results.

Staff and AT&T contend that no term or condition of the Order provides a variance from the Commission's [*11] requirement that the Company include the service quality factor in the PCI formula. Staff maintains that the data demonstrate that Illinois Bell's quality of service was below the standards set forth in the Order when the plan was implemented and that the quality of service diminished further in the months immediately following the Order. Specifically, Staff and AT&T maintain that Illinois Bell did not meet three service quality benchmarks for the 1994 calendar year: (1) Trouble reports per 100 access lines; (2) Percentage out of service more than 24 hours; and (3) Trunk Groups below objective. They assert that a service quality adjustment of -0.75% should be included in the PCI.

Staff maintains that applying the service quality adjustment would not constitute retroactive ratemaking because the service quality component is a current ratemaking requirement. Since the quality benchmarks are based on past performance, it is no different than other features in the alternative regulation plan such as the GDPPI and the exogenous factor Z, which are based on prior year's results.

Illinois Bell notes that the Order adopting the service quality component was not entered until October 11, [*12] 1994 and argues that it would be grossly unfair and improper to retroactively apply the service quality factor to calendar year 1994. During most of 1994, Illinois Bell was subject only to the statewide service quality standards set forth in 83 Ill. Adm. Code 730.500-540. The Order established service quality standards under alternative regulation based on Illinois Bell's 1990 and 1991 achieved performance levels. This resulted in quality standards for four of eight quality measures (percent of installation within five days, trouble reports per 100 access lines, percent of dial tone speed within a specified time, and operator average speed of answer) which are higher than the existing Commission standards.

Conclusion

The service quality factor was included in the price regulation formula because Section 13.506.1 provides that the Commission may approve an alternative regulation plan only if it makes certain findings, including one that the alternative form of regulation will maintain the quality and availability of telecommunications services. The Commission was concerned that a company operating under an alternative regulatory framework, particularly one without earnings sharing, [*13] might have too great an incentive to reduce expenditures in a manner which could have an adverse impact on service quality.

The Order adopting alternative regulation was not entered until October 1994,

and the service quality standards adopted by the Commission were, for several measures, higher than those found in existing Commission rules. For most of 1994, Illinois Bell was not aware that it would be held to the higher service quality standards, and its management practices and policies would necessarily be based upon the existing standards. As long as service quality was maintained above the existing standards, there would be no legal consequence for Illinois Bell.

The service quality adjustment is intended to maintain high levels of service quality by influencing management decisions. A feature which was not adopted until October 1994 would have no impact on management decisions prior to that time. It is also reasonable to assume that it may take some time for management to implement policies which reflect the increased significance of the selected service quality measures and improve performance to the mandated levels. For this reason, it is not particularly surprising that [*14] Illinois Bell's service quality did not immediately meet the new benchmarks.

We note for example, that the Administrative Code standard is 6.00 trouble reports per 100 access lines. The alternative regulation standard is only 2.66 reports per 100 access lines, which represents a 50% "improvement" over the Commission's existing standard for that measure of service quality. For 1994, Illinois Bell reported 3.43 trouble reports per 100 access lines, which appears to be reasonably close to the new standard, particularly considering the fact that the standard was not established until October. Similarly, Illinois Bell's 7.04% of customers out of service over 24 hours is close to the new benchmark of 6.95%. Performance in these two service quality measures is likely to change gradually, in response to such factors as resources committed to ongoing maintenance programs and the number of work crews available. Accordingly, the Commission agrees with Illinois Bell that it would be fundamentally unfair to apply the service quality adjustment merely because Illinois Bell did not meet the new standards throughout the year.

The Commission will not require a service quality adjustment in this [*15] first annual filing. However, the service quality provisions will be fully applicable in all future annual filings.

Tariff Restructure

Staff observes that Illinois Bell has proposed the restructuring of rates for the Residential Interconnection Charge, Business Direct Access Line and Directory Assistance. Each of these proposed restructurings have been suspended, while Illinois Bell's annual filing assumes that the restructures will take effect, and proposes rate changes predicated on these restructurings. Staff urges that the Commission require Illinois Bell to file new tariffs based on existing approved rate structures. AG and AT&T made similar arguments.

Illinois Bell acknowledged that the Commission may not act on the tariff suspensions prior to July 1. Assuming this occurs, Illinois Bell states that it will file tariffs prior to that time based on tariffs for services that are currently in effect (that is, prior to the proposed restructure.)

Conclusion

The Commission concurs with Staff. Illinois Bell must submit new tariffs with

adjusted prices consistent with the terms of the alternative regulation plan and reflecting those rate structures which are currently in [*16] effect.

In all future annual filings, Illinois Bell should propose tariffs based on the rate structure lawfully in effect at the time of filing. If Illinois Bell elects to include proposed tariffs which include restructured services, the filing should include alternative tariff sheets showing rates with and without the restructuring.

Imputation

In its Comments, Staff maintains that Illinois Bell should be required to do a separate imputation test for its residential noncompetitive usage sensitive service and its noncompetitive business usage sensitive service, pointing out that Illinois Bell has declared Bands B and C competitive for business usage sensitive service. Staff suggests that the issue could be deferred to Docket 95-0135 which was opened to consider the competitive reclassification.

Illinois Bell opposes the suggestion at this time. It notes that in the Order the Commission approved the scope of Illinois Bell's imputation tests for usage sensitive service with respect to the inclusion of both noncompetitive business and residence usage in the same test. Furthermore, Illinois Bell maintains that the issue of whether Band A noncompetitive business usage service should [*17] be subject to imputation testing does not belong in a docket considering competitive declaration of services.

Conclusion

The Commission concludes that it is unnecessary at this time to address the imputation issue raised by Staff. Staff is free, however, to propose an investigation of the imputation issue in another proceeding.

Initial Tariff Filing

CUB maintains that the initial tariffs filed by Illinois Bell to implement the Order failed to comply with the Order and with certain provisions of the Act. Specifically, CUB cites Section 5/10-110 of the Act and argues that the tariffs should have taken effect twenty days after service of the Order, or November 3, 1994. Instead the tariffs did not take effect until November 22, 1994. This allowed Illinois Bell to delay the rate reduction and retain the benefit of nineteen additional days of the former rates.

CUB further maintains that when calculating the rate reductions required by the Order, Illinois Bell used demand quantities for a time period considerably later than the test period used during the proceeding. This resulted in a smaller rate reduction than would have occurred if test period demand quantities were used. [*18]

Finally, CUB argues that Illinois Bell reduced carrier access charges without authorization of the Commission and reduced usage charges substantially less than ordered by the Commission.

Illinois Bell responds that its original compliance filing was made on November 15, 1994, withdrawn after discussions with Staff, and then refiled

November 21, 1994, with a November 22, 1994 effective date. It notes that the Order required the filing of tariffs "as soon as practicable after entry of the Order" and that Section 10-110 does not specifically address tariff filings and permits the Commission to prescribe additional time as "is reasonably necessary to comply with the Order."

Illinois Bell argues that CUB's substantive objections are also without merit. The Order adopted Staff's rate design recommendations and noted that, "in making these recommendations, Ms. Roth [Staff's witness] recognized that any usage price decreases would have to be considered in tandem with carrier access price reductions due to imputation requirements." Illinois Bell states that it implemented reductions in both usage and carrier access service to ensure that its rates could pass the imputation test, as required [*19] by Section 13-505.1 of the Act.

Illinois Bell states that it used current demand data in order to arrive at an accurate calculation of the revenue reduction ordered by the Commission. It maintains that the use of current demand data rather than historical data as CUB suggests, provides the most accurate basis for insuring that the $ 93.2 million revenue reduction ordered by the Commission was actually achieved.

Conclusion

CUB has not offered a plausible explanation for its decision to wait six months after entry of the Commission's order to raise these issues. While it is certainly true that some of the issues could not be raised in the application for rehearing because the tariffs were filed after that portion of the 92-0448/93-0239 proceeding was concluded, a complaint or a petition requesting a Commission investigation could have been filed at any time thereafter.

The Commission notes that the timing for implementation of the initial rates was specified in the Hearing Examiner's Proposed Order in that proceeding, and the Commission adopted that portion of the Proposed Order without change. CUB did not raise the Section 10-110 issue in its exceptions or in its application [*20] for rehearing.

Based on the information provided in this proceeding, the Commission is not persuaded that it is necessary to formally resolve, or take any other further action at this time, with respect to the initial tariff issues raised in CUB's comments.

FINDINGS AND ORDERING PARAGRAPHS

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

(1) Illinois Bell Telephone Company is an Illinois corporation engaged in the business of providing telecommunications services to the public in the State of Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Illinois Public Utilities Act;

(2) the Commission has jurisdiction over Illinois Bell Telephone Company and the subject matter of this proceeding;

(3) the recital of facts and law and conclusions reached in the prefatory

portion of this Order are supported by the record, and are hereby adopted as findings of fact and conclusions of law for purposes of this Order;

(4) Illinois Bell's proposal to include in the 1995-1996 PCI calculation an exogenous factor "Z" reflecting certain separations calculations [*21] should not be adopted for the reasons set forth herein;

(5) Illinois Bell should be required to recalculate the PCI with full supporting data which includes an exogenous factor "Z" solely reflecting the revenue changes associated with the reclassification of payphone services and required to satisfy the aggregate revenue test required by Section 13-507, in the amount determined in the Order in Docket 88-0412;

(6) Illinois Bell's proposed tariffs improperly reflect tariff restructurings and a PCI calculation which have not been approved by the Commission;

(7) Illinois Bell should be required to file new tariffs consistent with the determinations and conclusions herein.

IT IS THEREFORE ORDERED that Illinois Bell Telephone shall, within 21 days of entry of this Order, file tariffs reflecting a new calculation of the PCI for 1995-1996 which are consistent with the findings and conclusions hereinabove, and with all other terms and conditions of the Order in Docket 92-0448/93-0239 Consolidated, including, but not limited to a demonstration that each service basket API is less than or equal to the revised PCI, and a demonstration of compliance with Sections 13-505.1 and 13-507 of the [*22] Act.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.