STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

<table>
<thead>
<tr>
<th>Illinois Commerce Commission</th>
<th>:</th>
<th>:</th>
</tr>
</thead>
<tbody>
<tr>
<td>-vs-</td>
<td>:</td>
<td>:</td>
</tr>
<tr>
<td>Illinois Bell Telephone Company</td>
<td>:</td>
<td>:</td>
</tr>
<tr>
<td>:</td>
<td>:</td>
<td>:</td>
</tr>
<tr>
<td>Investigation of specified tariffs</td>
<td>:</td>
<td>:</td>
</tr>
<tr>
<td>declaring certain services to be competitive telecommunications</td>
<td>:</td>
<td>06-0027</td>
</tr>
<tr>
<td>services</td>
<td>:</td>
<td>:</td>
</tr>
<tr>
<td>:</td>
<td>:</td>
<td>:</td>
</tr>
</tbody>
</table>

ORDER

August 30, 2006
# Table of Contents

I. Procedural History 1

II. Preliminary Legal Matters 5
   A. Burden of Proof 5
   B. Standard of Proof 5

III. Applicable Statutes 5

IV. CCSAO Threshold Issue 9
   A. Commission Discussion and Analysis 10

V. Competition For Residential Local Exchange Service In The Chicago Lata 11
   A. AT&T Illinois’ Position 11
   B. Staff’s Position 35
   C. Attorney General’s Position 43
   D. Position of Cook County States Attorney 57
   E. Data Net/ True Comm Position 58
   F. CUB’s Initial Position 65
   G. Commission Discussion and Analysis 66

VI. THE ATT- CUB JOINT PROPOSAL 66
   A. AT&T Position 66
   B. CUB’s SUPPORT For The ATT-CUB PROPOSAL 74
   C. Attorney General’s Position on the Joint Proposal 83
   D. Staff’s Position on the Joint Proposal 88
   E. CCSAO Position On The Joint Proposal 88
   F. Commission Discussion and Analysis 89

VII. Reclassification of Section 13-518 Packages 100
   A. Attorney General’s Motion 100
   B. AT&T’s Position 101
   C. Staff’s Position 104
   D. CCSAO Position 106

VIII. SECTION 13-505.1 IMPUTATION 110
    A. AT&T Position 110
    B. Staff’s Position 114
    C. Commission Discussion and Analysis 119

IX. FINDINGS AND ORDERING PARAGRAPHS 121
POST EXCEPTIONS PROPOSED ORDER

I. Procedural History

On November 10, 2005, the Illinois Bell Telephone Company (hereafter “IBT”, “AT&T”, ATT IL or “AT&T Illinois”) filed tariff sheets that declared essentially all residential local services in MSA - 1 competitive within the meaning of Section 13-502 of the Illinois Public Utilities Act, 220 ILCS 5/13-502. See Advice # IL 05-971. More specifically, the AT&T filing classified as competitive network access lines, ISDN Direct lines, local usage, selected optional features, directory listing services, billing services and selected packages. The specific services reclassified by the filing include:

- Residence Network Access Lines and the Winback Residence Access Line Offer;
- Residence Usage Services including Bands A and B Local Usage, Residence Saver Pack Unlimited, and Local Saver Pack 30;
- Call Waiting, Caller ID, Caller ID with Name and Talking Call Waiting;
- Directory Listing Services including Additional Directory Listings, Private Directory Listings, Semi-Private Directory Listings and Custom Number Service;
- Billing Services including the Non-sufficient Check Charge and Minutes of Use Printed Detail Report;
- Residential ISDN Direct Service.

In addition to these specific services, AT&T reclassified the following residential packages containing combinations of the above services and combinations of services, and other services previously classified as non-competitive:
AT&T also included with its filing a verified statement naming alternative providers of these, functionally equivalent, or substitute services in MSA 1, a map identifying its incumbent service area within MSA 1, a Residence Local Service Imputation Cost Study, Summary of Rates, LRSIC, and Imputed Costs and an Aggregate Revenue Test.

Staff reviewed the attached filing and, on December 22, 2005, submitted a Staff Report which recommended that the Commission take several actions with respect to the AT&T Illinois filing and declaration. See, generally, Staff Report. More specifically, the Staff recommended that the Commission initiate an investigation into the propriety of AT&T Illinois’ classification, inasmuch as: (1) AT&T failed to provide sufficient supporting information upon which to make a determination as to the appropriateness of this classification; (2) the matter was one of importance to residential customers in the Chicago area, thus calling for Commission scrutiny, in light of the Commission’s reduced authority over competitive services; (3) preliminary imputation tests suggested that rate increases for residential network access lines might be required; and (4) the Commission is responsible for ensuring that these services are appropriately classified under Illinois law and that the public interest is upheld.

Staff further recommended that in order to conduct the investigation of the propriety of
AT&T's competitive reclassification, the Commission should order AT&T and alternative providers to file information and evidence, as outlined in the Staff Report that would allow the Commission to make its determination. Further, the Staff recommended that the Commission direct Staff to conduct Public Hearings across the affected areas of the Chicago LATA in order to provide the Commission with insight into the impact that this filing may have on consumers. Finally, because Section 13-502 requires the Commission to issue its final order no later than 180 days from the date that the investigation is initiated, Staff recommended that the information requests outlined above should be submitted in a timely fashion. Consequently, the Staff recommended that the Commission require AT&T to file its direct evidence no later than 6 calendar days; and alternative providers to supply the service specific information no later than 12 calendar days from the date of the Commission’s order, that comports with the information requirements Staff sought.

The Commission entered its Order initiating this proceeding, in reliance upon and consistent with the Staff Report, on January 11, 2006. See Initiating Order. AT&T Illinois duly submitted prefiled testimony and information purporting to respond to the information request on the dates set forth above. A number of parties sought to intervene in the proceeding, including the Attorney General of Illinois (“AG”), the Office of the Cook County States Attorney (“CCSAO”), the City of Chicago (City”), the Citizens Utility Board (“CUB”), DataNet Services, Inc., TruComm Corporation, (“Data Net” or “Data Net Systems”) and Gallatin River Communications, LLC.[1] All the parties were allowed to intervene.

While this was taking place, and pursuant to the Commission’s direction, the Staff conducted, pursuant to notice, public hearings at a number of locations in MSA-1. On Wednesday, February 15, 2006, Staff conducted a hearing at Malcolm X College, 1900 W. Van Buren Ave., Chicago, Cook County, Illinois. Present on behalf of Staff were John Hester, Director, Telecommunications Division; Michael Fountain, Director, Consumer Services Division, Brian Sterling, Office of Public Affairs and Robert Bensko, Chief Public Hearing Officer. On Thursday, February 16, 2006, Staff convened a hearing at the Wheaton City Hall, 303 W. Wesley St., Wheaton, Du Page County, Illinois, with Mr. Bensko and Mr. Sterling appearing on behalf of Staff. Next, on Wednesday, February 22, 2006, Staff conducted a public hearing at the Tinley Park Village Hall, 16250 S. Oak Park Ave., Tinley Park, Cook County, Illinois, with Mr. Bensko and Mr. Fountain representing Staff. Finally, on Thursday, February 23, 2006, Staff held a public meeting at the Skokie Village Hall, 5127 Oakton St., Skokie, Cook County, Illinois; Mr. Bensko and Mr. Hester represented Staff on this occasion. At each hearing, Staff solicited and obtained comment from interested members of the public. The public hearings were, in all cases, transcribed by certified shorthand reporters.

In the contested proceeding, extensive discovery was thereafter undertaken by a
number of parties, and various testimony was pre-filed pursuant to the schedule duly set.

AT&T Illinois sponsored the following testimony: Direct, Rebuttal, and Surrebuttal Testimony of W. Karl Wardin, and associated schedules, marked as AT&T Ex. 1.0, 1.1, and 1.3 respectively; Direct Testimony of Sandy M. Moore and associated schedules, marked as AT&T Ex. 2.0; Direct and Rebuttal Testimony of William E. Taylor and associated schedules, marked as AT&T Ex. 3.0 and 3.1 respectively; Direct and Rebuttal Testimony of Harry M. Shooshan, and associated schedules, marked AT&T Ex. 4.0 and 4.1 respectively; Direct and Rebuttal Testimony of Eric L. Panfil, and associated schedules, marked AT&T Ex. 5.0 and 5.1 respectively.

AT&T also sponsored the Rebuttal Testimony of David A. Svanda, marked as AT&T Ex. 8.0; Rebuttal Testimony of Ronald E. Kastner, marked as AT&T Ex. 9.0 Rebuttal Testimony of Joseph H. Weber, with associated schedule, marked as AT&T Ex. 10.0.

The Staff sponsored the following testimony: Direct and Rebuttal Testimony of Dr. Genio Staranczak, marked as Staff Ex. 1.0 and 4.0 respectively; Direct and Rebuttal Testimony of Dr. James Zolnierek and associated schedules, marked as Staff Ex. 2.0 at 5.0 respectively; Direct and Rebuttal Testimony of Robert F. Koch and associated schedules, marked as Staff Ex. 3.0 and 6.0 respectively.

The Attorney General sponsored the following testimony: the Direct and Rebuttal Testimony of Dr. Lee L. Selwyn, with associated schedules, marked as AG Ex. 1.0 and 1.1 respectively; the Direct Testimony of Larry Haynes, marked as AG Ex. 2.0.

The Citizens Utility Board sponsored the following testimony: the Direct and Rebuttal Testimony of Anne McKibbin, with associated schedules marked as CUB Ex. 1.0 and 2.0 respectively; the Rebuttal Testimony of Christopher C. Thomas, and associated schedules, marked as CUB Ex. 3.0.

Finally, DataNet Systems sponsored the following testimony: the Direct and Rebuttal Testimony of Joseph Gillan, and associated schedules, marked as DataNet Ex. 1.0 and 3.0 respectively; the Direct Testimony of Martin S. Segal and associated schedules, marked as DataNet Ex. 2.0.

The matter proceeded to evidentiary hearing on April 3 through April 7, 2006, in Chicago, Illinois. In the course of the hearing, testimony sponsored by the respective parties was introduced into evidence, witnesses cross-examined, and evidence otherwise adduced.

On May 9, 2005, AT&T filed its Notice of Intent to File Joint Proposal and Supporting Testimony, stating that AT&T and CUB had reached agreement regarding a Joint Proposal to compromise and settle the issues in dispute in this proceeding. Thereafter, on May 10, 2006, CUB and AT&T submitted their Stipulation and Joint Proposal. On the same date,
AT&T and CUB pre-filed their respective testimony in support of the Joint Proposal. A schedule for the pre-filing of testimony responsive to the Joint Proposal was set, and such testimony pre-filed; the parties sponsored the following testimony regarding the Joint Proposal:

AT&T sponsored the Direct and Rebuttal Testimony of Mr. Warden and attached schedules, marked as AT&T Ex. 1.4 and 1.5 respectively. The Staff sponsored the Direct Testimony of Dr. Zolnierek and attached schedules, marked as Staff Ex. 9.0. CUB sponsored the Direct Testimony of Ms. McKibbin, and attached schedules, marked as CUB Ex. 5.0. The Attorney General, the Cook County States Attorney, the City of Chicago, and the AARP sponsored the Direct Testimony of Dr. Selwyn, and attached schedules, marked as AG Ex. 1.2, and the Attorney General sponsored the Direct Testimony of Julie Zolot, AG Ex. 3.0. Finally, DataNet sponsored the Direct Testimony of Mr. Gillan, DataNet Ex. 5.0. An evidentiary hearing regarding the Joint Proposal was convened on June 5 and 6, 2006.

Initial briefs were filed on June 16, 2006. Reply briefs were filed on June 23, 2006. The CCSAO did not file a Reply Brief. AT&T, Staff, the AG and the CCSAO filed draft order language. A Proposed Order was filed on July 20, 2006. Briefs on Exceptions were filed on July 27, 2006 and Replies on Exceptions were filed on August 2, 2006.

II. Preliminary Legal Matters

A. Burden of Proof

Section 13-502(b) of the Public Utilities Act provides, in relevant part, that: “[i]n any hearing or investigation [regarding the proper classification of a service], the burden of proof as to the proper classification of any service shall rest upon the telecommunications carrier providing the service.” 220 ILCS 5/13-502(b). This being such a hearing or investigation, AT&T Illinois has the burden of proof.

B. Standard of Proof

Section 10-15 of the Illinois Administrative Procedure Act provides that “[u]nless otherwise provided by law or stated in the agency’s rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence.” 5 ILCS 100/10-15. The Commission has observed that the Administrative Procedure Act standard appears to be: “the appropriate standard in all contested cases[.]” Order at 4, Illinois Commerce Commission on its Own Motion: Amendment of 83 Ill. Admin.
III. Applicable Statutes

Section 13-502 of the Public Utilities Act provides as follows:

(a) All telecommunications services offered or provided under tariff by telecommunications carriers shall be classified as either competitive or noncompetitive. A telecommunications carrier may offer or provide either competitive or noncompetitive telecommunications services, or both, subject to proper certification and other applicable provisions of this Article. Any tariff filed with the Commission as required by Section 13-501 shall indicate whether the service to be offered or provided is competitive or noncompetitive.

(b) A service shall be classified as competitive only if, and only to the extent that, for some identifiable class or group of customers in an exchange, group of exchanges, or some other clearly defined geographical area, such service, or its functional equivalent, or a substitute service, is reasonably available from more than one provider, whether or not any such provider is a telecommunications carrier subject to regulation under this Act. All telecommunications services not properly classified as competitive shall be classified as noncompetitive. The Commission shall have the power to investigate the propriety of any classification of a telecommunications service on its own motion and shall investigate upon complaint. In any hearing or investigation, the burden of proof as to the proper classification of any service shall rest upon the telecommunications carrier providing the service. After notice and hearing, the Commission shall order the proper classification of any service in whole or in part. The Commission shall make its determination and issue its final order no later than 180 days from the date such hearing or investigation is initiated. If the Commission enters into a hearing upon complaint and if the Commission fails to issue an order within that period, the complaint shall be deemed granted unless the Commission, the complainant, and the telecommunications carrier providing the service agree to extend the time period.

(c) In determining whether a service should be reclassified as competitive, the Commission shall, at a minimum, consider the following factors:

(1) the number, size, and geographic distribution of other providers of the service;
(2) the availability of functionally equivalent services in the relevant geographic area and the ability of telecommunications carriers or other persons to make the same, equivalent, or substitutable service readily available in the relevant market at comparable rates, terms, and conditions;
(3) the existence of economic, technological, or any other barriers to entry into, or exit from, the relevant market;
(4) the extent to which other telecommunications companies must rely upon the service of another telecommunications carrier to provide telecommunications service; and
(5) any other factors that may affect competition and the public interest that the Commission deems appropriate.

(d) No tariff classifying a new telecommunications service as competitive or reclassifying a previously noncompetitive telecommunications service as competitive, which is filed by a telecommunications carrier which also offers or provides noncompetitive telecommunications service, shall be effective unless and until such telecommunications carrier offering or providing, or seeking to offer or provide, such proposed competitive service prepares and files a study of the long-run service incremental cost underlying such service and demonstrates that the tariffed rates and charges for the service and any relevant group of services that includes the proposed competitive service and for which resources are used in common solely by that group of services are not less than the long-run service incremental cost of providing the service and each relevant group of services. Such study shall be given proprietary treatment by the Commission at the request of such carrier if any other provider of the competitive service, its functional equivalent, or a substitute service in the geographical area described by the proposed tariff has not filed, or has not been required to file, such a study.

(e) In the event any telecommunications service has been classified and filed as competitive by the telecommunications carrier, and has been offered or provided on such basis, and the Commission subsequently determines after investigation that such classification improperly included services which were in fact noncompetitive, the Commission shall have the power to determine and order refunds to customers for any overcharges which may have resulted from the improper classification, or to order such other remedies provided to it under this Act, or to seek an appropriate remedy or relief in a court of competent jurisdiction.

(f) If no hearing or investigation regarding the propriety of a competitive classification of a telecommunications service is initiated within 180 days after a telecommunications carrier files a tariff listing such telecommunications service as competitive, no refunds to customers for any overcharges which may result from an improper classification shall be ordered for the period from the time the telecommunications carrier filed such tariff listing the service as competitive up to the time an investigation of the service classification is initiated by the Commission’s own motion or the filing of a complaint. Where a hearing or an investigation regarding the propriety of a telecommunications service classification as competitive is initiated after
180 days from the filing of the tariff, the period subject to refund for improper classification shall begin on the date such investigation or hearing is initiated by the filing of a Commission motion or a complaint.

220 ILCS 5/13-502

Section 13-505.1, entitled “Imputation”, provides that:

(a) This Section applies only to a telecommunications carrier that provides both competitive and noncompetitive services. If a carrier provides noncompetitive services or noncompetitive service elements to other telecommunications carriers for the provision by the other carriers of competitive services, switched interexchange services, or interexchange private line services or to other persons with which the telecommunications carrier also competes for the provision by those other persons of information or enhanced telecommunications services, as defined by the Federal Communications Commission, then the telecommunications carrier shall satisfy an imputation test for each of its own competitive services, switched interexchange services, or interexchange private line services, that utilize the same or functionally equivalent noncompetitive services or noncompetitive service elements. The purpose of the imputation test is to determine whether the aggregate revenue for each service exceeds the costs, as defined in this Section, to be imputed for each service based on the telecommunications carrier’s own routing arrangements. The portion of a service consisting of residence untimed calls shall be excluded from the imputation test. The imputed costs of a service for purposes of this test shall be defined as the sum of:

(1) specifically tariffed premium rates for the noncompetitive services or noncompetitive service elements, or their functional equivalent, that are utilized to provide the service;

(2) the long-run service incremental costs of facilities and functionalities that are utilized but not specifically tariffed; and

(3) any other identifiable, long-run service incremental costs associated with the provision of the service.

(b) Notwithstanding the provisions of subsection (a), if a telecommunications carrier permits other telecommunications carriers to purchase interexchange private line services, except those provided under contract or other form of agreement pursuant to the provisions of Section 13-509, under the same tariffed rates, terms, and conditions as any other customer,
then such interexchange private line services provided by the telecommunications carrier shall not be subject to the imputation test required in this Section.

220 ILCS 5/13-505.1

Section 13-518, entitled “Optional service packages”, provides that:

(a) It is the intent of this Section to provide unlimited local service packages at prices that will result in savings for the average consumer. Each telecommunications carrier that provides competitive and noncompetitive services, and that is subject to an alternative regulation plan pursuant to Section 13-506.1 of this Article, shall provide, in addition to such other services as it offers, the following optional packages of services for a fixed monthly rate, which, along with the terms and conditions thereof, the Commission shall review, pursuant to Article IX of this Act, to determine whether such rates, terms, and conditions are fair, just, and reasonable.

(1) A budget package, which shall consist of residential access service and unlimited local calls.
(2) A flat rate package, which shall consist of residential access service, unlimited local calls, and the customer’s choice of 2 vertical services as defined in this Section.
(3) An enhanced flat rate package, which shall consist of residential access service for 2 lines, unlimited local calls, the customer’s choice of 2 vertical services as defined in this Section, and unlimited local toll service.

(b) Nothing in this Section or this Act shall be construed to prohibit any telecommunications carrier subject to this Section from charging customers who elect to take one of the groups of services offered pursuant to this Section, any applicable surcharges, fees, and taxes.

(c) The term "vertical services", when used in this Section, includes, but is not necessarily limited to, call waiting, call forwarding, 3-way calling, caller ID, call tracing, automatic callback, repeat dialing, and voicemail.

(d) The service packages described in this Section shall be defined as noncompetitive services.

220 ILCS 5/13-518

IV CCSAO Threshold Issue

The CCSAO raised an objection at the hearing to the admission of Mr. Wardin’s (AT&T’s principal witness) prefiled testimony. It argued the Commission needs to determine the witness’s basis of knowledge on whether there is improper reliance on hearsay. While the Administrative Law Judge overruled the CCSAO’s objection focusing on the admission of Wardin’s direct and rebuttal testimony, the Commission should decide this issue independently. The CCSAO contends the Commission needs to determine if the type of
material in Mr. Wardin’s testimony is the type of material that an expert in the field would reasonably rely on. In Wilson v. Clark, the Illinois Supreme Court adopted Federal rules of evidence 703 and 705. 84 Ill. 2d 186, 194, 417 N.E.2d 1322, 1981 Ill. LEXIS 244, 49 Ill. Dec. 308 (1981). The rules have been interpreted to allow opinions based on facts not in evidence. However, care needs to be taken to ensure that facts or data that the expert is relying on is: “…of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence” Fed. R. Evid. 703.…” The CCSAO contends that the wholesale importing into this case by Mr. Wardin of the data and testimony of the competitors in the market is improper.

The CCSAO maintains that while the Commission’s rules of practice provide some flexibility with respect to the admission of evidence, what AT&T has done in Mr. Wardin’s testimony has gone too far. The Commission’s Rules of Practice provide the following on evidence:

…In contested cases, and licensing proceedings, the rules of evidence and privilege applied in civil cases in the circuit courts of the State of Illinois shall be followed. However, evidence not admissible under such rules may be admitted if it is of a type commonly relied on by reasonable prudent persons in the conduct of their affairs. [5 ILCS 100/10-40]…

83 Ill.Admin. Code Section 200.610

The CCSAO contends that reasonably prudent persons in the conduct of their affairs would not rely on some of the types of evidence included in Mr. Wardin’s testimony with respect to AT&T’s various competitors. To the extent that AT&T Illinois was trying to show services available from other providers to meet its burden of proof, it should have produced testimony from those providers or other admissible evidence to meet the various requirements of the Public Utilities Act for a service to be properly classified as competitive. If the Commission believes that the ALJ properly admitted Mr. Wardin’s testimony, then in light of the type of evidence AT&T Illinois relies on the Commission should consider that in deciding what weight to give the various data included.

A. Commission Discussion and Analysis

The CCSAO objected generally to the admission of AT&T witness Wardin’s direct and rebuttal testimony regarding AT&T’s competitors because it contained hearsay. The ALJ overruled the objection. Mr. Wardin was the principal witness for AT&T. His testimony included, among other things, information about the other companies’ prices and the geographic availability of their products. Strictly speaking, his testimony did contain hearsay, in that he provided information about third parties about whose businesses he lacks first hand knowledge. On the other hand, Commission notes that his statements were supported by documentary evidence including hard data and copies of the competitors’ own
publications and advertisements. Moreover, his testimony, other than cross examination was pre-filed well in advance of the hearings, giving the other parties opportunity, which they took advantage of, to prepare detailed cross examination and counter evidence.

Under *Wilson v. Clark*, 84 Ill. 2d 186, 194, 417 N.E.2d 1322, 1981 Ill. LEXIS 244, (1981) and the relevant sections of the Illinois Administrative Code the Commission has considerable latitude in this area. Considering all of the circumstances, including the complexity and compressed time frame of this proceeding, we find that Mr. Wardin’s testimony meets the requirements for admission provided for in the Commission’s Rules of Practice because it is of a type that would be commonly relied on by reasonably prudent persons in the conduct of their affairs. We find that Mr. Wardin’s testimony was properly admitted.

V. **Competition For Residential Local Exchange Service In The Chicago Lata**

A. **AT&T Illinois’ Position**

1. **Overview**

AT&T Illinois contends that it faces an extraordinary amount of competition from a variety of telecommunications service providers which provide basic local exchange service, its functional equivalent or substitute services to residential customers in the Chicago LATA, which, AT&T Illinois witness Dr. Taylor testified, is an appropriate geographic area for classifying local services. According to AT&T Illinois, these competitors fall within three general groups: (i) over 75 competitive local exchange carriers (“CLECs”) (including cable companies) such as Comcast, RCN, MCI, McLeodUSA, Sage, Z-Tel (Trinsic) and Talk America; (ii) wireless carriers, such as Verizon, US Cellular, T-Mobile, Sprint/Nextel, Virgin Mobile, TracPhone and Illinois Valley Cellular; and (iii) independent Voice over Internet Protocol (“VoIP”) providers, such as Vonage, Lingo, VoiceWing, SunRocket, BroadVox Direct and AOL TotalTalk. AT&T Illinois claimed that these CLEC, wireless and VoIP providers actively promote their services as alternatives to AT&T Illinois’ services through various marketing programs, including direct mail, outbound telemarketing, TV and radio, billboards and newspaper advertisements.

AT&T Illinois asserted that competitive service providers have been able to successfully compete in this market. In support of this assertion, AT&T Illinois presented evidence showing that at the time the residential services at issue were classified as competitive, CLECs and wireless carriers alone served approximately 24% of the residence lines in AT&T Illinois’ service territory in the Chicago LATA. This percentage does not take into account customers who obtain service from the numerous non-CLEC VoIP providers.
AT&T Illinois asserted that, by any measure, its residential wireline service has been significantly impacted by the competition described above. Since January 2001, the overall number of residential lines served by AT&T Illinois has dropped by approximately 1.4 million, a 32% decrease. In the Chicago LATA, for the period from December 2000 through March 2006, the total number of AT&T Illinois’ residential lines decreased by 1,007,661, or about 30%. (AT&T Ill. Ex. 1.5 (Wardin), lines 313-318). A substantial number of these lost access lines were primary residential access lines.

2. Number, Size, Geographic Distribution And Market Share Of Alternative Providers (Section 13-502(c)(1))

a. CLECs

In analyzing the level of CLEC competition in the Chicago LATA, AT&T Illinois relied primarily on two sources of hard data. The Company used its wholesale records to determine the number of lines served by CLECs using the UNE Platform (“UNE-P”), resale and Local Wholesale Complete (“LWC”), a commercially negotiated replacement for the UNE-P. AT&T Illinois then used the E9-1-1 database to determine the number of lines served by CLECs through the use of their own switching or switching provided by a third party. The information obtained from the E9-1-1 and wholesale records data sources showed that there are over 75 CLECs (not including pre-merger AT&T) actually providing basic local exchange service to residential customers in the Chicago LATA. As of December 31, 2005, those carriers served 502,454 residential access lines in the Chicago LATA, equal to approximately 16.4% of the total number of residential wireline access lines. Approximately 295,574, or 59%, of those lines are provisioned using CLEC-owned facilities, either on a UNE-L basis (meaning that the CLEC is using its own or a third party’s switching capability in conjunction with UNE loops provided by AT&T Illinois), or on a total facility bypass basis (meaning that the CLEC is using its own loop and switching facilities). The remaining number of CLEC lines are provisioned using the UNE-P (18%); LWC (22%); and resale (1%).

AT&T Illinois disputed the Attorney General’s argument that the use of E9-1-1 data resulted in an overstatement of the number of residential access lines served by competitors. According to AT&T Illinois, because the E9-1-1 database is maintained on behalf of emergency service providers, extreme accuracy in compiling the data is required, and it is in the interest of ILECs and CLECs alike to ensure that the data is accurately maintained. AT&T Illinois noted that Staff agrees that AT&T Illinois’ line counts are accurate.
AT&T Illinois noted that the Attorney General apparently would have the Commission rely solely on the number of lines reported by certain CLECs to Staff in response to a data request in Docket No. 06-0028. AT&T Illinois asserted that the CLEC-reported data significantly understates the number of lines for several reasons. Most notably, the CLEC-reported data contains information from only thirteen CLECs, thereby excluding the line counts of several carriers that provide service in the state. In addition, the number of lines reported by certain CLECs to Staff – by their own admission – did not reflect the full number of residential lines being served by those carriers. For example, Comcast’s response to Staff reported customers rather than line counts (which reduces the total by excluding non-primary lines) and excluded residential voice services provided using VoIP technology. Similarly, the number of lines reported to Staff by Sprint, Global Crossing, and Level 3 excluded lines that those carriers provide at wholesale for residential services by other carriers (which do not include their lines in the E9-1-1 database). AT&T Illinois also responded to the Attorney General’s and Data Net’s argument that the E9-1-1 data overstates the number of lines offered by Focal Communications, because Focal serves large apartment buildings and does not offer mass market service to residential customers. AT&T Illinois and Staff both took the position that, in that situation, the E9-1-1 listings should be counted as residential because each line is going to a different residential address.

According to AT&T Illinois, the CLECs for which it obtained data from the E9-1-1 database and wholesale records providing residential service are geographically distributed throughout the Chicago LATA. On average, there are 29 CLECs currently providing basic local exchange service to residential customers in each of AT&T Illinois’ 118 Chicago LATA exchanges. In 108 (92%) of those exchanges, there are 10 or more CLECs providing service. Over half of the exchanges are served by at least 30 CLECs. The fewest number of CLECs providing service in any one exchange is four. Thus, AT&T Illinois concluded, residential basic local exchange service is reasonably available from CLECs throughout the Chicago LATA.

AT&T Illinois asserted that the CLECs actively competing for residential customers in the Chicago LATA include cable companies, such as Comcast and RCN, which provide phone service over their own cable network, not over AT&T Illinois’ loops. Comcast’s cable franchise area alone covers exchanges that contain at least 98% of AT&T Illinois’ lines. The vast majority of cable company lines – covering an area with over 99% of AT&T Illinois’ residential lines – are cable modem ready. Thus, cable companies can potentially offer voice services to almost all residential customers in the Chicago LATA. Comcast and RCN already serve a substantial number of residential local exchange customers in the Chicago LATA. As a result of an intense marketing campaign, the number of Comcast voice subscribers has continued to grow during 2006. According to AT&T Illinois, competition from Comcast was a significant factor driving AT&T Illinois’ net loss of 18,159 access lines during the first quarter of 2006.

According to AT&T Illinois, cable telephony takes two forms. Comcast and RCN both
employ circuit-switched technology not unlike that used by other telephone companies. In addition, cable companies who have already deployed circuit-switched technology are rolling out voice offerings that use Internet Protocol (“IP”) and rely on so-called “soft-switches.” In most cases, the cable companies are configuring their IP telephony offerings as primary line substitutes and they offer full E911 access and standby power backup in the event of a general power outage. Comcast is in the process of completing the rollout of its new IP-based “Digital Voice” service throughout the Chicago LATA. This service will eventually replace Comcast’s traditional, circuit-switched cable telephony service (“Digital Phone”). Comcast has stated that Digital Voice service will be available in all of its markets in 2006, passing approximately 40 million homes. Digital Voice is already available to customers in 61 exchanges within the Chicago LATA outside the City of Chicago and in four of the five cable franchise zones located in the City of Chicago.

AT&T Illinois asserts that almost every CLEC operating in the Chicago LATA has operations in multiple states. To give a sense of the size of the competitive carriers which have residential customers in the Chicago LATA, AT&T Illinois provided information regarding 12 such carriers, all of which are well-established companies with cumulative revenues in excess of $100 billion, over 100 million connections and over 250,000 employees.

AT&T Illinois claimed that the reasonable availability of residential local exchange service from CLECs in the Chicago LATA is also evidenced by the extent to which CLECs use their own facilities for the provision of such service. According to AT&T Illinois, as of December 31, 2005, 59% of the CLEC-provided residential access lines are provisioned over CLEC-owned switch and/or loop facilities, up from 54% as of September 30, 2005. A total of 50 switches are owned by 29 CLECs in the Chicago LATA. These switches generally cover multiple rate centers and provide local exchange service, as evidenced by the assignment to those switches of over 5.6 million local telephone numbers, which exceeds the total number of lines, both residential and business, that AT&T Illinois serves in the entire Chicago LATA. AT&T Illinois stated that it is physically and technically possible for several CLECs to use the same CLEC-owned switch, just as certain CLECs are presently using AT&T Illinois’ switches. In fact, there are currently a number of CLECs operating in the Chicago LATA that offer wholesale switching for local service, including XO, McLeodUSA, and Sprint.

AT&T Illinois asserted that an additional indicator of the vibrancy of CLEC competition in the Chicago LATA is the number of collocation arrangements that CLECs have with AT&T Illinois. A CLEC can reach all customers served by the wire center in which it is collocated, which could include multiple exchanges. In the Chicago LATA, 31 CLECs have approximately 663 physical and virtual collocation arrangements in 66 of the exchanges, covering 90% of the residential lines. Furthermore, any single collocation arrangement has the potential of serving all of the residential customers in the Chicago LATA by use of an Enhanced Extended Loop (“EEL”), a loop-transport combination through
which a CLEC connects to the UNE loop to an interoffice facility to extend the loop to another location, such as a CLEC switch or to another AT&T Illinois switch where the CLEC has a collocation site. AT&T Illinois stated that it has provisioned 5,400 EELs for CLECs in the Chicago LATA.

AT&T Illinois says yet another indication of the extent of competition is number portability. As of September 2005, AT&T Illinois was porting over 800,000 residential and business telephone numbers in the Chicago LATA to CLEC and wireless carriers, numbers that were previously used by AT&T Illinois to serve these customers itself. These numbers are ported from 115 different AT&T Illinois exchanges to 30 different CLECs and wireless providers. Ported telephone number data demonstrate that CLECs and wireless carriers have successfully won local customers from AT&T Illinois.

b. Wireless Providers

AT&T argues that wireless service is reasonably available throughout the Chicago LATA from numerous providers including Sprint/Nextel, T-Mobile, Cingular, US Cellular, Verizon, Liberty Wireless, and Virgin Wireless. It is undisputed that most of these operators are large, well-established national firms with large subscriber bases. Several are affiliates of large telecommunications companies with billions of dollars of assets. AT&T Illinois contended that the service offered by these providers is widely available, and it is being actively marketed throughout AT&T Illinois’ service area in the Chicago LATA.

AT&T Illinois asserted that the wireless business has been phenomenally successful in Illinois (and nationally). Based on the most recent FCC report, wireless subscribers in Illinois increased by 106%, while AT&T Illinois’ wireline subscribers decreased by 32%, over the five year period ending in 2004. The number of wireless phones in Illinois now exceeds the total number of ILEC and CLEC lines, both residence and business. AT&T Illinois pointed to a Yankee Group survey estimates that 35% of all local calls and 60% of all long distance calls in households with wireless service are made over cell phones.

AT&T states that the FCC estimated, based on Census Bureau data, that 6% of households nationwide do not have a wireline connection. AT&T Illinois asserted that, based on a Yankee Group study showing that urban wireless users are about 50% more likely to have cut the cord than wireless customers generally, 9% is a reasonable estimate of the percentage of households in the Chicago LATA that have substituted wireless phones for wireline. Other sources provide higher estimates of wireless substitution, in the 9.4%-10% range nationwide. To corroborate these estimates, AT&T Illinois commissioned a survey of customers in the Chicago LATA to determine their use of wireless and wireline service and
the degree to which the former is substituting for the latter. The survey was presented by Mr. Shooshan. Based on this survey, 24% of wireless customers do not have wireline service at their home. Moreover, the FCC relied on Census Bureau data which is two years old and nationwide in scope – wireless-only use tends to be higher in urban areas (like the Chicago LATA) and in areas with non-white and lower income populations (again, like the Chicago LATA). Thus, AT&T Illinois contended, an assumption that wireless-only households in the Chicago LATA exceed a two-year old national average is more than reasonable.

Furthermore, AT&T Illinois asserted, wireless competition does not occur only where wireless customers have “cut the cord.” There is also significant wireless usage substitution occurring in households which also have wireline service. The results of this survey show that, for wireless users who still subscribe to traditional wireline telephone service, 24% use wireless phones as their primary home phone and 51% frequently use both their wireless phones and their traditional landline phones to make and receive calls. AT&T Illinois contended that these and other results of the survey confirm what other studies performed by the FCC and other independent sources show: wireless service is considered by customers, and is increasingly being used by customers, as a substitute for both wireline connections and wireline usage.

c. Independent VoIP Providers

AT&T Illinois contended that, in addition to cable companies that provide IP-based telephony service over their own facilities, there are numerous independent, or stand-alone VoIP competitors that offer service in Illinois include Vonage, BroadVox Direct, Packet8, Net2Phone, VoiceWing, SunRocket, Lingo, ACN and Skype. According to AT&T Illinois, VoIP is already a significant competitive alternative to wireline service and analysts expect the threat to increase exponentially over the next few years. While subscription to stand-alone VoIP requires a broadband internet connection, approximately 33% of Illinois households subscribe to broadband service today. Comcast’s cable modem service (which can be used as a platform for VoIP subscription) is available in areas covering 98% of AT&T Illinois’ access lines. As of December of 2004, Illinois consumers had a choice of 25 DSL providers, 9 cable modem providers, and 46 unique broadband access service providers, ranking Illinois 5th in the nation in broadband deployment. The survey commissioned by AT&T Illinois demonstrated that most high speed Internet subscribers were very familiar with the fact that their connection could be used to make telephone calls and that 20% had actually done so. AT&T Illinois witness Shooshan testified that “analysts estimate that residential adoption of VoIP service is bound to grow exponentially from 6.5 million homes in 2004 to over 26 million homes in 2008” and “the threat to traditional telephone companies is substantial.”
3. The Same, Functionally Equivalent And/Or Substitute Services

AT&T Illinois contended that CLEC, wireless and VoIP service providers offer the same, functionally equivalent and/or substitute services for AT&T Illinois’ wireline local exchange service within the meaning of Section 13-502(b) of the Act. The Attorney General and Data Net disagree with respect to wireless and VoIP services, contending that these offerings do not operate in precisely the same manner as wireline service and, therefore, cannot be “substitutes.” AT&T Illinois argued that these parties are incorrect from a legal and economic standpoint.

First, AT&T Illinois contended, the Commission has already ruled in past reclassification cases that it is not necessary for services to operate identically for them to be “functionally equivalent” or “substitute” services within the meaning of Section 13-502. When pre-merger AT&T reclassified its intrastate long distance services as competitive in 1986, it enjoyed so-called “1+” dialing arrangements, where customers could dial “1” plus the 10-digit number to make a call. Although some competing carriers offered “1+” dialing in some exchanges (i.e., exchanges that had been converted to equal access), in other exchanges their services could only be accessed using 800 numbers – which required the dialing of as many as 22-26 additional digits and the quality of service was much lower. *Order in Docket No. 86-0003*, adopted April 23, 1986, at 5. Nonetheless, the Commission determined that 800 service “counted” as a functionally equivalent or substitute service and, therefore, that a majority of access line customers in Illinois had the ability to obtain long distance service from more than one provider. *Id.* at 8. This finding was affirmed on appeal.

Second, AT&T Illinois asserted, in competitive markets, goods and services that have significantly different characteristics are substitutes for each other and are in the same product market when an increase in the price of one stimulates demand for the other, or, conversely, when a decrease in the price of one results in a decrease in demand for the other. Therefore, it is not enough for the parties to point to differences between the services. They must demonstrate that these differences are so significant that customers would not switch from one service to the other in the face of price changes.

Third, AT&T Illinois asserted that the question of whether services are functional equivalents or substitutes for one another ultimately has to consider customer behavior. As long as a non-trivial number of customers would switch from one product to the other in the face of price changes, the customers who would not switch are protected from non-market price changes because other customers would switch – and thus make the price increase unprofitable overall.
a. CLECs

In general, it is undisputed that the residential local exchange services provided by CLECs are the same as the residential local exchange services offered by AT&T Illinois. The Attorney General, however, raised questions regarding the comparability of cable-based VoIP telephony to traditional wireline service. In response, AT&T Illinois asserted that cable-based VoIP telephony is comparable in functionality and quality to traditional circuit-switched voice service. Cable companies such as Comcast are positioning their IP telephony offerings as a primary line replacement and the technology is intended to be transparent from an end user perspective. Cable-based VoIP calls are routed over the cable company’s own private network which provides traditional voice quality (whereas independent VoIP providers route calls over the public Internet). According to AT&T Illinois, cable VoIP not only provides all of the features and functionalities of analog circuit-switched telephony (including voicemail, caller ID, call waiting and call forwarding), but it also comes with additional features such as the ability to check voice mail online from any computer and the ability to forward calls sequentially to a series of numbers (for example, first to a cellphone and then to another wireline number). Comcast’s Digital Voice service includes battery backup, is E911 and CALEA-compliant, and is accessible for those with hearing disabilities. Comcast’s service will work with existing inside wiring and with standard telephones. AT&T Illinois noted that even Data Net witness Gillan acknowledged that the deployment by cable companies of IP-based transmission facilities within their networks is an “internal engineering decision” which is “service-neutral to the customers.” AT&T Illinois also pointed out that, in its order approving the AT&T-SBC Merger, the FCC expressly found that VoIP-based services provided by cable companies (referred to by the FCC as “facilities-based VoIP services”) are “sufficiently close substitutes for local service [provided by SBC] to include them in the relevant product market” for purposes of determining the impact that the merger would have on local competition.[2]

b. Wireless Service

AT&T Illinois took the position that wireless service is clearly a substitute service for wireline service. According to AT&T Illinois, it is undisputed that wireless provides the same network connections, local and long distance calling capabilities and features as wireline service – with the added advantage of mobility. Although some customers use their cell phones only outside their homes, substitution of cell phone calling for wireline calling within the home is increasingly prevalent. As indicated previously, approximately 9% of AT&T Illinois’ customers have “cut the cord” and use wireless service as a complete substitute for wireline service. AT&T Illinois also noted that the survey conducted by Mr. Shooshan confirms that a substantial number of customers in the Chicago LATA perceive wireless service as a completely adequate substitute for wireline service. AT&T Illinois asserted that policymakers recognize that wireless service is a substitute for wireline service. For
example, in the 2005 SBC/AT&T Merger Order, the FCC concluded that wireless service is in the same product market as wireline service, stating that mobile wireless service “... should be included in the local services product market when it is used as a complete substitute for all of a consumer’s voice communications needs.” The state regulatory commissions in Wisconsin and New York have reached the same conclusion.

AT&T Illinois took issue with the Attorney General’s contention that the fact that many customers still maintain both wireline and wireless service means that they are complements, not substitutes. As a matter of economics, AT&T Illinois asserted, demand for AT&T Illinois’ wireline service would have to be going up as wireless prices are going down for them to be complements, but that is not what has been happening in the marketplace. According to AT&T Illinois, the fact that many customers use both technologies means only that, at current prices, they value both wireline and wireless service. If prices were to increase for wireline service, increasing numbers of customers would become wireless-only. Furthermore, not every customer has to view wireless service as a complete substitute for wireline service for the service to constrain AT&T Illinois’ wireline prices. Based on Dr. Taylor’s analyses, the amount of cord-cutting that is currently taking place in the marketplace is sufficient to make price increases for wireline service above a competitive market level unprofitable.

In response to the Attorney General’s argument that AT&T Illinois has failed to meet its burden of proof because it did not submit a cross-price elasticity study, AT&T Illinois asserted there is no statute or rule that requires the submission of such a study. AT&T Illinois further asserted that such a study is not necessary to show that customers have, in fact, cut the cord. As Dr. Taylor explained, econometric analyses have been done that demonstrate that wireline and wireless service are substitutes. The undisputed evidence already shows actual substitution and that, as wireless prices have fallen, the demand for wireline service (both lines and usage) has fallen as well. According to AT&T Illinois, even the Attorney General agrees that nearly 6% of consumers have cut the cord. AT&T Illinois contended that given that competitive analysis merely requires substitution “at the margin,” a 6% market share loss is more than sufficient to prove that wireless is a substitute for wireline residential service.

AT&T Illinois also disputed the Attorney General’s contention that wireless service is used primarily for long distance calling and, therefore, does not compete with AT&T Illinois’ local service. According to AT&T Illinois, this is incorrect as a matter of fact. The FCC recognizes that customers use their cell phones as a substitute for local calling, as well as long distance calling, a conclusion is corroborated by the surveys of Chicago LATA customers conducted by Mr. Shooshan. Of the customers interviewed, 38% said that they used their cell phone primarily for local calling and 55% said that they used it for both local and long distance calling; only 7% responded that their cell phone use was primarily long distance in nature. Similar conclusions have been reached by the Yankee Group and J.D. Power and Associates. AT&T Illinois also challenged Data Net’s contention that
wireless substitution is confined to young people. According to AT&T Illinois, the FCC and the Yankee Group have recognized that, while young adults are more likely to be wireless-only users, cord-cutting crosses numerous demographic lines and is common among minority and low income groups. Even among older adults, wireless substitution is prevalent. Mr. Shooshan’s survey determined that 18% of wireless customers 31-50 and 15% of those over 50 have no landline telephone.

With respect to the question of whether wireless service provides E9-1-1 services that are equivalent to those provided by landline phones, AT&T Illinois noted that the FCC has been active in this area, requiring wireless carriers to provide E9-1-1 capabilities over a 4-year transition period that ended on December 31, 2005. There is no evidence that these FCC mandates are not being met. Moreover, AT&T Illinois asserted, wireless services grew quickly before the FCC imposed E9-1-1 requirements on wireless carriers, strongly suggesting that a substantial number of customers do not place as much value on E9-1-1 service as these parties assume.

AT&T Illinois also disputed the Attorney General’s argument that wireless service is not functionally equivalent to landline local telephone service because (1) it is not available to an entire household, (2) it can only function on one telephone at a time, (3) it cannot be used for automatic burglar/fire alarm monitoring applications, and (4) wireless phones have to be recharged. According to AT&T Illinois, these minor differences hardly render wireless service a non-substitute. Substitutes do not have to be identical. What matters is that they provide the same or similar functionality, and that an increase in the price of one would likely induce the consumer to switch to the other provided that its price has not changed. This standard has been met.

c. Independent VoIP Service

AT&T Illinois took the position that independent VoIP service is also functionally equivalent to or a substitute for wireline telephone service. According to AT&T Illinois, a customer can make VoIP voice calls to and receive VoIP voice calls from anyone over the public switched network in the United States or internationally. VoIP offerings include the same features as traditional telephone service (e.g., Caller ID, Call Waiting and voicemail), as well as additional features that landline companies cannot or do not offer. Independent VoIP service is also mobile, in the sense that customers can utilize their VoIP connection wherever they plug in their computer or laptop.

AT&T Illinois responded to the Attorney General’s argument that stand-alone VoIP service (as opposed to facilities-based VoIP provided by a facilities-based carrier like Comcast) cannot be counted as a competitive substitute for basic residential local exchange service because AT&T Illinois did not present specific quantities for VoIP residential lines.
AT&T Illinois asserted that, as a matter of economics, a substitute product does not have to have any specific market share, or any market share at all. What matters is whether customers would switch to that product if the price for the target product were raised above the competitive level. According to AT&T Illinois, stand-alone VoIP meets that profile. Providers like Vonage and Skype position their service as a substitute for wireline residential service and customers are aware of its availability. Moreover, industry analysts and observers uniformly recognize the growth of stand-alone VoIP and project its rapid growth. According to AT&T Illinois, the VoIP penetration rate is generally estimated at 4% and broadband access is available to nearly all residential consumers in Illinois. AT&T Illinois cited orders of other state commissions which, with a similar lack of hard data about current VoIP market share, have held that VoIP service must be counted as a substitute for basic local exchange service.[3]

AT&T Illinois also argued that the fact that stand-alone VoIP service requires a broadband Internet connection is no reason to ignore stand-alone VoIP. According to AT&T Illinois, broadband connections are nearly universally available in AT&T Illinois’ service area in the Chicago LATA and already in place for 1.5 million residential consumers in the Illinois (33% of the market). All such consumers could subscribe to VoIP for as little as $10 per month (including all usage and vertical features), without having to pay anything extra for a broadband connection. Thus, there is today a ready demographic for VoIP providers and a large potential base of consumers.

AT&T Illinois disagreed with Staff’s contention that the Commission’s decision in Docket No. 95-0135 precludes consideration of stand-alone VoIP. There, the Commission concluded that Bands B and C usage were not competitive because customers had to purchase adjunct equipment to obtain equivalent “1+” dialing connections (e.g., auto dialers) to the competing IXC’s. According to AT&T Illinois, the circumstances in that case have no application here. Customers are not purchasing broadband connections in order to circumvent functional differences between AT&T Illinois’ wireline service and stand-alone VoIP services. They are purchasing broadband connections because they want high speed Internet access; the fact that these connections can then also be used to obtain very inexpensive telephone service is just a “bonus.” In other words, broadband connections are not “...separately purchased technological devices that are required to raise the functionality of the subject service. ...” Order in Docket Nos. 95-0135/95-0197, adopted October 16, 1995, at 25.

AT&T Illinois also disputed the contention of the Attorney General and Data Net that independent VoIP is not a functionally equivalent service because it is not available during power outages. According to AT&T Illinois, this power issue is being resolved. Earthlink and Covad are moving to a line-powered technology. Vonage recommends that customers purchase an uninterruptible power supply from a local electronics store. Moreover, wireline customers who rely
on cordless phones experience exactly the same lack of service in a power outage. Thus, this is just one facet of the VoIP service which customers would take into account in making a purchasing decision.

Finally, AT&T Illinois addressed concerns about the availability of E9-1-1. AT&T Illinois asserted that, like wireless service, the FCC is requiring VoIP providers to provide E9-1-1 service. Approximately 200 interconnected VoIP providers have submitted compliance letters to the FCC indicating that they are now providing fully compliant E9-1-1 service to 90% or more of their subscribers. Thus, E9-1-1 issues are being addressed successfully by the industry.

4. Barriers To Entry (Section 13-502(c)(3))

AT&T Illinois asserts that there are no barriers to entry into or exit from the residential local exchange marketplace in the Chicago LATA. AT&T Illinois asserted that the telecommunications market has unique attributes due to the Telecommunications Act and changing technology which have eliminated any such barriers. Historically, regulation and technology created entry barriers in local telecommunications markets. The economies of scale and scope associated with a ubiquitous wireline local exchange network implied that local exchange service was a natural monopoly. While local competition, interconnection and the mandatory supply of local loops predated the federal Telecommunications Act in Illinois, the implementation of that Act removed all remaining economic barriers to entry into Illinois telecommunications markets. Under Sections 251(c) and 252(d) of the 1996 Act and subsequent federal and state regulatory orders, AT&T Illinois must provide UNEs at cost-based rates, resell retail services at an avoided cost discount and interconnect with competitors’ networks using cost-based reciprocal interconnection charges. As a result, AT&T Illinois asserted, competitors can now choose among cost-effective entry strategies — i.e., building facilities (based on a variety of technology platforms); leasing parts of AT&T Illinois’ network at regulated or market-based rates, as applicable; or simply reselling existing AT&T Illinois’ retail services.

AT&T Illinois contends that the availability of leased UNEs at regulated prices based on TELRIC costs means that competitors can enter using those facilities without committing to significant sunk costs of their own. Resale also allows CLECs to order service as customers are acquired; and, because there are no minimum terms or volumes of service, the service can be terminated without cost when the customer exits. Hence resale (and its LWC variant) does not require that the CLEC incur sunk network costs of entry or exit, and the availability of resale at an avoided-cost discount means that the fixed costs of entering the local exchange business remain low.
Moreover, AT&T Illinois claimed, changes in technology have reduced the risks associated with facilities-based competition. As previously discussed, cable competitors have entered using their in-place cable network, combined with either circuit-switched or IP-based technologies that do not rely on AT&T Illinois’ facilities at all. Improvements in switch technology have made switches more scalable, so that the minimum investment required to purchase a switch is smaller and the difference in switching costs per line for large and small CLECs has been reduced. Dr. Taylor analyzed empirical data on CLEC use of resale as compared to their own facilities and concluded that competition is now practical for all local exchange service. He pointed to the healthy growth trends that show competitors gaining — in both absolute and relative terms — residential customers in the Chicago LATA, most noticeably since mid-2001. These trends are further complemented by evidence of a significant shift from resale and the UNE-P to partial or full use of CLEC-owned facilities to serve residential customers. According to Dr. Taylor, these are all clear signals of the growing (and proven) ability of competitors in AT&T Illinois’ service territory to compete with the Company for residential customers and their commitment to competing over the long haul.

In response to the Attorney General’s argument that the FCC’s de-listing of the UNE-P as a UNE constitutes a barrier to entry, AT&T Illinois contended that the Attorney General ignored the market reality that prompted the FCC to make this decision. Cable-based CLECs can expand their telephone service rapidly, and without incurring significant additional sunk costs, to their current video customer footprint. Commercially-negotiated substitutions for the UNE-P (e.g., LWC) provide the CLECs with the same type of supply elasticity as the UNE-P. AT&T Illinois asserted that if it were to attempt to price its retail services above a competitive level, CLECs using the LWC would be able to rapidly enter or expand in the market to capture customers. CLECs that purchase the LWC product clearly believe that the business opportunities are attractive. Moreover, AT&T Illinois contended, the FCC’s decision regarding switching and impairment means that the FCC believed that CLECs could buy or self-supply switching services at prices that did not impair their ability to compete for residential local exchange customers.

5. The Extent To Which Competitors Rely Upon The Service Of Another Telecommunications Carrier (Section 13-502(c)(4))

AT&T Illinois asserted that, for the most part, competitors today rely on their own network facilities and/or facilities of a third party, and do not rely on AT&T Illinois’ network switching and loop facilities to provide service. Such providers include all wireless and independent VoIP providers, as well as many CLECs, particularly cable companies. In fact, as of December 31, 2005, approximately 51% of all CLEC residential access lines in the Chicago LATA were served entirely via the use of CLEC-owned switching and distribution (loop) facilities.

According to AT&T Illinois, a number of CLECs purchase UNE loops from AT&T Illinois,
either on a stand-alone basis in conjunction with their own switching (or switching obtained from a third party) (UNE-L), or resale. As of December 31, 2005, approximately 7% of all CLEC residential lines were served via UNE-L, and approximately 1% were served via resale. According to AT&T Illinois, to the extent that CLECs rely on AT&T Illinois’ unbundled UNE loops or resale of AT&T Illinois’ retail services, they are protected by state and federal regulation of their rates, terms and conditions. The prices for UNE loops are set by the Commission in conformance with the FCC’s TELRIC cost rules. Prices for resale services reflect an avoided cost discount from AT&T Illinois’ retail prices and are also subject to price caps under AT&T Illinois’ Alternative Regulation Plan. In addition, competitors which rely on AT&T Illinois’ unbundled loops or resale are protected by Illinois’ statutory imputation test, which requires that AT&T Illinois’ retail price for any competitive service cover its incremental cost, including the price that competitors must pay for those services. AT&T Illinois asserted that the prices charged by AT&T Illinois for the residential local exchange services at issue in this case all pass a properly constructed imputation test.

AT&T Illinois stated that, although certain CLECs have chosen to rely on combination loop/switching facilities provided wholly by AT&T Illinois (either the state law UNE-P or LWC), such facilities are not essential to the CLECs’ ability to compete. To the contrary, in the Triennial Review Remand Order, the FCC found that CLECs are not impaired in their ability to compete with ILECs such as AT&T Illinois without access to unbundled local switching. In making this finding, the FCC recognized that CLECs have reasonably available competitive alternatives to ILEC-supplied switching, including use of the CLEC’s own switches and the purchase of wholesale switching service from other CLECs. Alternatively, CLECs are free to enter into commercially negotiated agreements with the ILEC for end-to-end wholesale services, such as LWC, at market-based prices. As of December 31, 2005, approximately 22% of CLEC residential lines in the Chicago LATA were served via LWC.

In sum, AT&T Illinois asserted, numerous competitive providers of local exchange service do not rely on AT&T Illinois’ switching and loop facilities at all. To the extent that CLECs do rely on such facilities, the prices for those facilities are controlled either by regulation (in the case of UNE loops or resale) or by market forces (in the case of switching, where the FCC has determined that market forces are adequate). Accordingly, AT&T Illinois concluded, consideration of the factors set forth in Section 13-502(c)(4) supports the competitive classification of the residential services at issue in this case.

6. The Future Of CLEC Competition

a. CLEC Competition
AT&T Illinois noted that, notwithstanding the fact that wireless and wireline competitive carriers serve at least 24% of the market for residential local exchange service today in the Chicago LATA, and that most of them are facilities based, the Attorney General and Data Net argued that the demise of CLEC competition is imminent and that AT&T Illinois will regain all of those lost lines. In response, AT&T Illinois argued that Section 13-502(b) does not ask (or permit) the Commission to project competition trends into the future or speculate about what the industry and the marketplace will look like years hence. In determining whether the AT&T Illinois residential service at issue in this case meets the definition of “competitive” under Section 13-502(b), the Commission must base its decision on evidence regarding the “reasonably available” alternatives that currently exist for those services. AT&T Illinois claimed that the 24% competitor market share in the Chicago LATA is based on hard data, while the Intervenors’ predictions are based on speculation.

AT&T Illinois argued that the Attorney General and Data Net are also wrong as a matter of fact. According to AT&T Illinois, their argument is largely premised on a drop in the number of CLEC-served residence access lines between December 31, 2004 and December 31, 2005, which they claim constitutes an irreversible trend. To the contrary, AT&T Illinois contended, these are just two data points in a marketplace that is dynamic and constantly changing. As Staff witness Dr. Zolnierek testified, there is no evidence that this one year-over-year decline will continue in the future. In fact, AT&T Illinois asserted, the evidence suggests that CLEC lines are on the increase again. During the fourth quarter of 2005, many CLECs (including AT&T Illinois’ largest competitor) added lines on a net basis, such that there was less than a 3% net decline in overall CLEC-served residential access lines during that quarter. During the first quarter of 2006, the total number of facilities-based and LWC-based residential access lines served by CLECs in the Chicago LATA increased by 15%.

AT&T Illinois further asserted that the decline in CLEC-served lines in 2005 did not constitute a reduction in the overall level of competition in the marketplace, but rather a continuing shift by customers toward new providers and new technologies. Although both non-affiliated CLECs and pre-merger AT&T lost residence lines in the Chicago LATA during this period, those lines did not come back to AT&T Illinois. AT&T Illinois itself lost approximately 40,000 lines in 2005. Similarly, during the fourth quarter of 2005, when the total number of CLEC residence lines decreased by 3% (i.e., 13,683), the number of AT&T Illinois lines decreased by almost as much (i.e., 12,083 lines). AT&T Illinois lost an additional 18,159 lines during the first quarter of 2006. Thus, AT&T Illinois contended, the CLEC line losses represented customers who were choosing other competitive alternatives, such as cable companies, wireless carriers and VoIP providers, to meet their local telecommunications needs.

b. The UNE-P
According to AT&T Illinois, the Attorney General and Data Net hinged their predictions on the fact that the future of the UNE-P is in doubt. They claimed that the UNE-P is essential to competition and that other service platforms offered by AT&T Illinois and/or CLEC-owned facilities are not viable in the marketplace. AT&T Illinois contended that these arguments fly in the face of the FCC’s *Triennial Review Remand Order* ("TRRO") which is now national policy. In that Order, the FCC determined, based on an extensive record, that the CLECs’ ability to compete in the local marketplace is not impaired without the availability of the UNE-P at TELRIC rates and rejected the very arguments that the Attorney General and Data Net are making here. TRRO, ¶¶ 204, 210-225. The FCC further found that a requirement that incumbent local exchange carriers provide the UNE-P to CLECs actually harmed competition and deterred network investment. TRRO, ¶¶ 199, 204, 220. According to AT&T Illinois, the Commission should decline the invitation of the Attorney General and Data Net to relitigate national policy.

AT&T Illinois further argued that the marketplace has already demonstrated, as a matter of fact, that the UNE-P is not essential to competition. Notwithstanding its continued availability in Illinois under state law, most CLECs have already ceased to use it and have moved on to other serving arrangements that they believe will allow them to compete effectively. Between September 30, 2005 and December 31, 2005, the number of CLEC lines in the Chicago LATA provisioned over the UNE-P decreased from 215,360 (or 42%) of the total number of CLEC lines to 90,187 (or 18%). The carriers that were using these UNE-P lines did not, however, simply disappear from the residential market as they would have if the Attorney General’s and Data Net’s theories were correct. To the contrary, these carriers transitioned their residential lines to alternative service arrangements, including LWC, their own facilities (including the UNE-L) and resale. As a net result, the overall number of CLEC-served residential lines changed very slightly between September 30, 2005 and December 31, 2005. AT&T Illinois also observed that residential competition continues to flourish in states where CLECs do not have a state law right to purchase the UNE-P. According to AT&T Illinois, the Attorney General and Data Net failed to explain why Illinois is unique among all 50 states in requiring the UNE-P to sustain viable competition.

c. Local Wholesale Complete

AT&T Illinois responded to the Attorney General’s claim that CLECs could not succeed in the marketplace with LWC because it is priced too high relative to UNE-P rates and AT&T Illinois’ retail local exchange rates. According to AT&T Illinois, the Attorney General’s speculation is directly contradicted by the fact that numerous CLECs are currently competing for the provision of residential local exchange service using LWC as a platform. As of December 31, 2005, ten CLECs were using LWC and an additional 27 CLECs (37 in all) entered into LWC commercial agreements with AT&T Illinois during the first quarter of 2006. The number of LWC-served residence lines increased over this period from 110,691
lines as of year-end 2005 to 151,479 lines as of March 31, 2006. AT&T Illinois asserted that this increase suggests that the CLECs have, indeed, made rational business decisions.

AT&T Illinois criticized the Attorney General’s economic (“price squeeze”) analysis as painting an unrealistically gloomy picture of the prospects for CLEC competition by overstating the costs and understating the revenues which LWC carriers will experience. For example, the Attorney General claimed that the transition from the UNE-P to LWC could cause cost increases of “as much as $17.15” per line, per month. In fact, AT&T Illinois contended, the difference between the LWC rate and the UNE-P rate in the Chicago LATA is only $4.98, on a weighted average basis. The Attorney General calculated its much higher figure by (i) using a $27.50 LWC monthly rate that does not include any of the potential discounts that a CLEC can receive; and (ii) using the Access Area A UNE-P rate, which represents only 3% of AT&T Illinois’ residence customers.

AT&T Illinois asserted that the Attorney General also understated the revenues an LWC carrier would receive from customers. The Attorney General contended that a CLEC would experience a “shortfall” (or, in the case of packages in certain rate areas, a small “surplus”) between the price of LWC and the amount of revenues the CLEC could potentially achieve. However, this analysis of AT&T Illinois’ stand-alone service revenues did not include local usage, features, Band C and intraLATA toll, interLATA toll or originating and terminating switched access. Similarly, the Attorney General package analysis did not include revenues from additional features that might be sold beyond the package features or any of the other revenue sources listed above (other than local usage and features). According to AT&T Illinois, this is not the way a price squeeze test should be conducted. The FCC recognized the need to examine all revenue sources when it developed its TRRO impairment test. Triennial Review Remand Order, ¶ 24.

AT&T Illinois contended that a properly performed “price squeeze” test would demonstrate that there is ample opportunity for CLECs to make a profit using LWC. For example, the “All-Distance Select” version of AT&T Illinois’ uSelect3 package (one of the packages Dr. Selwyn analyzed) includes local usage, features, unlimited Band C, local toll and interLATA toll usage and costs $55.45 per month (including the $4.50 EUCL charge). This represents a surplus of approximately $31 over the effective LWC rate of $24.50. Similarly, AT&T Illinois claimed, there is a profit potential for CLECs using LWC to compete for stand-alone customers based on the amount that the average AT&T Illinois stand-alone customer spends, taking into account the amounts spent on the access line, local usage, features, Band C, and intraLATA and interLATA toll.

According to AT&T Illinois, the Attorney General and Data Net attempted to bootstrap their positions based on statements made by both pre-merger AT&T and MCI relative to the future of competition in the local market without the UNE-P. AT&T Illinois claimed that the Attorney General and Data Net mischaracterized these statements. Pre-merger AT&T made it clear that the elimination
of UNE-P was only one factor prompting its decision to exit the mass market. Other factors included increased competition from cable, wireless, and VoIP providers. Similarly, MCI did not state that it intended to abandon the residential market altogether – rather, it pointed to a “decline” in its consumer base. AT&T Illinois pointed out that, like pre-merger AT&T, MCI identified numerous reasons for this decline, including “competition from cable telephone, wireless, VoIP and instant messaging.” AT&T Illinois asserted that these are the competitive forces that have resulted in a decline in AT&T Illinois’ residential consumer base. More importantly, AT&T Illinois contended, MCI has not exited the residential market in the Chicago LATA as a matter of fact. As recently as March 2006, MCI’s Illinois website indicated that its residential service was available to new customers in all 118 of AT&T Illinois’ exchanges in the Chicago LATA. AT&T Illinois continues to lose residential access lines to MCI.

d. UNE-L

AT&T Illinois also took issue with the Attorney General’s and Data Net’s argument that the UNE-L (i.e., the use by a CLEC of its own or third-party supplied switching facilities in conjunction with AT&T Illinois-supplied UNE loops) is not a practical alternative to the UNE-P. AT&T Illinois asserted that these parties are once again attempting to relitigate matters resolved by the FCC in the TRRO proceeding, in which the FCC determined that CLECs are not impaired without access to mass market switching. Moreover, AT&T Illinois pointed out, the Attorney General relied on three-year old testimony submitted by pre-merger AT&T in a Washington state proceeding that predated the TRRO and which addressed the then-existing hot cut procedures in Qwest territory. AT&T Illinois stated that, in the TRRO, the FCC considered and rejected the same arguments raised by the Attorney General, concluding that “neither economic nor operational impediments associated with switch deployment or hot cuts pose barriers to entry sufficient to give rise to impairment on a nationwide basis.” TRRO at 222. In reaching this conclusion, the FCC mentioned favorably the hot cut access that had been developed by pre-merger SBC. AT&T Illinois argued that the UNE-L operational issues raised by the Attorney General were also refuted in the rebuttal testimony of Mr. Joseph Weber, a telecommunications engineer with over 30 years of experience in systems engineering and network planning at pre-merger AT&T and Bell Labs. According to AT&T Illinois, Mr. Weber described various ways of efficiently competing through a UNE-L strategy.

AT&T Illinois also responded to the assertion of Data Net that it and nine other CLECs had investigated “various forms of alternative facilities to the incumbent public network” and concluded that they were “unable to find facilities to continue the provision of mass market services to residential and small business customers.” AT&T Illinois contended that Data Net offered no details regarding the nature, scope or results of the alleged investigation. Furthermore, AT&T Illinois contended, Data Net’s assertion that these “alternative
technologies” presented “technological problems that have not been overcome at this time” does not reasonably apply to the UNE-L approach described by Mr. Weber, which has been in widespread use (including by CLECs) for years. AT&T Illinois also asserted that Data Net’s suggestion that a UNE-L approach would require a CLEC to collocate in all 150 end offices in Chicago is wrong and ignores the fact that EELs or resale could be used for those small offices where collocation might not be appropriate.

In response to Data Net’s assertion that the UNE-L is not a “theoretical entry strategy for the residential market,” AT&T Illinois presented evidence that in states such as Michigan, there has been a significant transition of CLEC lines from the UNE-P to the UNE-L as a result of the TRRO. According to AT&T Illinois, that transition has been much slower in Illinois, at least in part due to the fact that AT&T Illinois must continue to provide CLECs with the UNE-P. Accordingly, AT&T Illinois contended, the fact that UNE-L has not been used more extensively to date in Illinois proves nothing about its long-term viability as an “entry strategy for the residential market.”

e. Resale

AT&T Illinois responded to Data Net’s assertion that there is no evidence that resale is “economically viable” because “resale” has been in a steady decline in Illinois since the year 2000, its peak year. According to AT&T Illinois, the decline in resale since 2000 is almost certainly attributable to the availability of UNE-P, which provided CLECs with a substantially larger discount off of AT&T Illinois’ retail rates (and, therefore, higher profits). Thus, that decline does not mean that resale is not “economically viable.” AT&T Illinois argued that the Commission cannot dismiss evidence of resale competition simply because it may not be as prevalent as other types of competition, such as competition from UNE-P and UNE-L providers. If resale providers are actually acquiring lines at current prices, they obviously would acquire more lines if AT&T Illinois raised its price to supra-competitive levels, and therefore, resale must be taken into consideration in the Commission’s competitive analysis. In fact, AT&T Illinois contended, there are at least nine CLECs which currently use resale as part of their overall business strategy in Illinois.

AT&T Illinois also responded to Data Net’s assertion that “resale-based entrants are fundamentally incapable of imposing pricing discipline on AT&T Illinois because the wholesale rate that the resale-based carrier pays AT&T Illinois will increase in lock step with any increase in AT&T Illinois’ retail rates.” According to AT&T Illinois, this assertion incorrectly assumed that, because the price paid for resale service is established as a percentage discount from the retail rate, increases in the retail rate automatically result in a higher wholesale rate for a resale-based provider. AT&T Illinois pointed out that, in Illinois, resale prices are subject to the price cap in the Company’s Alternative Regulation Plan. Because wholesale retail prices cannot be increased in “lockstep” with
increases in rates for associated retail services, any increase in retail prices will result in a larger discount than would otherwise be required under the avoided cost standard.

7. ATT’s Position on Measured Service vs. Packages

ATT’s Illinois took the position that the competitive availability of local exchange service must be determined based on the functionalities provided – not rate plans – and that the relevant inquiry is whether a majority of customers in the geographic market have comparably-priced alternatives. ATT’s Illinois explained that it offers local exchange services to its customers under a variety of rate plans which can be aggregated under two headings: “stand-alone” services and “packages.” Under the stand-alone alternative, customers purchase a network access line, local measured usage and features on an “à la carte” basis, and make their own decisions as to what combination of calling capabilities and/or features they want. Alternatively, they can buy those functionalities in a package, where the combination of a network access line, unlimited local usage and features is provided for a single, fixed monthly price. ATT’s Illinois stated that the only difference between these two alternatives was rate structure. The network functionalities that are provided on a stand-alone basis are identical to those available in packages and customers who subscribe to stand-alone services use the same range of network functionalities in aggregate as customers who subscribe to packages.

ATT’s Illinois argued that Section 13-502, by its terms, is focused on the functional dimensions of the service and does not require that every rate plan be available from more than one provider. ATT’s Illinois explained that identification of the “service” or “product market” declared competitive based on functionality (i.e., one that includes both stand-alone and package rate plans) was consistent with relevant economic principles. ATT’s Illinois pointed out that Dr. Taylor had testified that the economic market for local exchange service includes all products that are “demand substitutes” for each other – i.e., products where a price increase for one will result in increased demand for the others. According to ATT’s Illinois, there is no dispute that its stand-alone rate plans and packages offer identical functionality, that customers do switch back and forth between these options, and that price changes could result in further customer movement. ATT’s Illinois further argued that the Commission has not previously defined the product market in competitive classification cases based on rate plans, citing to the early classification of Centrex as competitive despite the fact that PBX purchasers did not have the same pricing options. ATT’s Illinois further pointed out that this Commission has never treated measured service as an essential component of an incumbent carrier’s local service offerings and has never imposed stand-alone service requirements on other carriers; in fact, the major CLECs (e.g., pre-merger AT&T, MCI, McLeodUSA and Comcast) were permitted to grandfather their stand-alone local service offerings over the 1997-2003 time frame without any investigation by the Commission. ATT’s Illinois pointed out that the Public Service Commission of Wisconsin had addressed this identical product market issue in a similar AT&T Wisconsin competitive classification docket and concluded that local exchange services offered under packages and stand-alone rate plans were one market precisely because customers were switching
between rate plans. *Petition of SBC Wisconsin for Suspension of Wisconsin Statute Sec. 196.196(1) with Regard to Basic Local Exchange Service, Docket No. 6720-TI-196 (Public Service Commission of Wisconsin)*, adopted November 23, 2005, at 20. Thus, AT&T Illinois argued that stand-alone rate plans and packages should be included in the same economic product market for purposes of this proceeding.

AT&T Illinois took the position that only a majority of customers must have competitive alternatives available to them to meet the “reasonably available” standard in Section 13-502(b), citing to the 1986 case in which pre-merger AT&T declared its intrastate long distance services competitive. In that case, only 70% of the access lines in Illinois had access to more than one long distance provider on an equal access basis; other customers either had no access or had to use 800 numbers to access a competitive IXC. *Order in Docket No. 86-0003, supra at 5.* Nevertheless, the Commission approved AT&T’s reclassification, finding that “. . . a majority of access line customers presently have the ability to obtain long distance service from more than one provider.” *Id.* at 8. In affirming this decision on appeal, the Appellate Court stated that the “reasonably available” language in Section 13-502 did not require that “. . . literally every customer in this state have the choice of a carrier, other than AT&T, that provides near identical long distance service to that of AT&T.” *MCI Telecommunications Corp. v. Ill. Comm. Comm., 168 Ill. App. 3d 1008, 1015 (1st Dist. 1988).* Therefore, AT&T Illinois stated, it would be legally incorrect for the Commission to take the service or product definition in this proceeding down to the level of rate plans or to use anything other than a “majority” standard to determine the competitive status of AT&T Illinois’ local exchange services.

Therefore, AT&T Illinois contended that its local exchange services satisfied Sections 13-502(b) and (c)(2). AT&T Illinois pointed out that a majority of its Chicago LATA customers now subscribe to packages (66%), and that more are switching over from stand-alone offerings every day. AT&T Illinois argued that many of the remaining stand-alone services customers would also find packages to be a reasonable economic alternative. Conservatively estimating that packages would be attractive to 25%-30% of its current stand-alone customers, AT&T Illinois argued that at least 74% of its local service customers in the Chicago LATA have comparably priced competitive alternatives. According to AT&T Illinois, this more than satisfies the “majority” test established by the Commission in the 1986 AT&T reclassification proceeding, where only 70% of AT&T Illinois’ customers had access to competitive providers’ services.

a. Service Packages

To compare the many packages of residential services available to consumers in the Chicago LATA, AT&T Illinois selected two representative packages, one that offers unlimited local calling with six features and one that offers unlimited local calling and unlimited long distance with three features and demonstrated that packages with comparable rates, terms
and conditions are available throughout the Chicago LATA from many CLECs, wireless and VoIP providers. AT&T Illinois noted that Staff had also conducted a thorough analysis of the packages offered by AT&T Illinois and a wide range of competitors and had concluded that local service packages were available from multiple providers at comparable rates, terms and conditions. AT&T Illinois further demonstrated that there were wireless plans with prices comparable to, and in some cases less expensive than, those of AT&T Illinois’ packages and popular VoIP plans that provide for unlimited local and long distance calling that were considerably less expensive than AT&T Illinois’ package offerings with similar features. Even if the monthly cost of broadband is factored in, AT&T Illinois pointed out that consumers pay essentially the same prices for the VoIP plans and AT&T Illinois’ comparable offerings.

In response to the Attorney General’s argument that the prices of service packages offered by competitors that include both long distance and local service must be compared to the prices for packages offered by AT&T Illinois that offer only local service, AT&T Illinois argued that this is not how customers make buying decisions. To the contrary, in evaluating the cost of a competitor’s package that includes local and long distance service, AT&T Illinois pointed out that any rational customer would look at the cost of purchasing both local and long distance services from AT&T Illinois. AT&T Illinois argued that the Attorney General was also ignoring reality when it complained that differences in the number of features included in the packages offered by AT&T Illinois and its competitors made a direct comparison problematic. In the real world, argued AT&T Illinois, a package offered by a competitor that includes seven features for a price that is slightly higher than the price of a package offered by AT&T Illinois that includes three or six features is a reasonably available competitive alternative even though the prices are not identical. AT&T Illinois further argued that products do not have to be identically priced or provide identical functions to be in the same market. The test for substitutes is “reasonable interchangeability of use,” and many factors can affect interchangeability of use. *Brown Shoe Co. v. United States*, 370 U.S. 294, 325-26 (1956). Indeed, according to AT&T Illinois, variation in price and other aspects are exactly what one would expect (and consumers desire) from providers seeking to differentiate themselves in a competitive market, and, for this reason, “[c]ourts have repeatedly rejected efforts to define markets by price variances or product quality variances. Such distinctions are economically meaningless where the differences are actually a spectrum of price and quality differences.” *In re Super Premium Ice Cream Distribution Antitrust Litigation*, 691 F. Supp. 1262, 1268 (N.D. Cal. 1988) (collecting cases); accord, *United States v. Continental Can Co.*, 378 U.S. 441, 453 (1964) (“that the competition here involved. . . is between products with distinctive characteristics does not automatically remove it from [the same product market]”). AT&T Illinois pointed out that the evidence of competitor market share proves that customers already do engage in substitution, and that is all that needs to be shown. AT&T Illinois noted that Staff had found this to be a vital point, concluding that the Commission need not make decisions in reliance upon hypothetical, theoretical, or speculative evidence, because it has actual provisioning information that largely obviates the need for, and indeed the relevance of, such evidence.
AT&T Illinois provided a simple example of the misleading nature of the Attorney General’s package comparisons. The Attorney General contended that Comcast’s telephone service is not competitively priced, claiming that Comcast charges $54.95 for telephone service only. AT&T Illinois explained, however, that this comparison ignores that, for Comcast’s cable television and Internet subscribers, the price of telephone service is just $39.95 ($44.95 if the customer has either cable television or Internet service but not both). Moreover, since Comcast’s Digital Voice Service includes unlimited local and long distance calling and several features, AT&T Illinois stated that the comparable product was not AT&T Illinois’ $23.50 offering for local service only, but rather its All Distance Plan, which sells for $49.95. Thus, Comcast’s package price is lower for all customers who already take other service from Comcast, which is a considerable number.

AT&T Illinois provided a similar example of how the Attorney General’s analyses of wireless and VoIP packages were misleading. For example, the Attorney General argued that the average price for wireless packages was $35.70, which will not constrain AT&T Illinois’ current uSelect 3 and 6 rates. However, wireless plans allow customers to make local, toll, and long distance calling and typically include at no extra charge a wide range of vertical features (Caller ID, voice mail, etc.). Therefore, according to AT&T Illinois, a proper apples-to-apples comparison requires a comparison of the price of the wireless plans to the price of the “all-distance” versions of the uSelect 3 and 6 packages, which exceed the $35.70 wireless average price. Moreover, AT&T Illinois pointed out that US Cellular offers a $24.90 plan that includes 400 anytime local minutes, plus unlimited long distance and unlimited weekend minutes. This price is only $1.40 more than the price of the local-only version of uSelect 3 and $4.10 less than the price of the local-only version of uSelect 6. AT&T Illinois disputed the Attorney General’s argument that the VoIP service packages should not count because, in addition to the price of VoIP itself, consumers who do not already subscribe to broadband internet service would have to purchase a broadband connection. AT&T Illinois pointed out that over 1.5 million households in Illinois (as of December 2004) already had a broadband connection; for these consumers, the effective price of VoIP does not include a broadband connection. As Dr. Taylor explained, a price increase for residential local exchange service could prove unprofitable if it induced enough “marginal” customers — which need comprise only a fraction of the 33% of consumers that already have a broadband connection – to switch to VoIP.

b. Stand-Alone Service

Although the parties generally conceded that some stand-alone service customers have limited alternatives in the marketplace – i.e., customers who make few calls of any kind and are not interested in features – AT&T Illinois stated that this rate plan does not constitute a “product market” and does not pose a barrier to a competitive classification. AT&T Illinois referred to the testimony of Dr. Zolnierek who pointed out that the mere fact that competitors may not be offering prices comparable to AT&T Illinois’ measured service offerings for these “low use” customers does not mean that competitors are not providing local service at competitive rates. Dr. Zolnierek stated that rates need only be comparable at “competitive market levels” to satisfy Section 13-502(c)(2) and that AT&T Illinois’ stand-alone rates are
clearly not at that level.

In response to the Staff’s and Attorney General’s attempt to define a “service” for purposes of this proceeding by parsing the words in Section 13-502, AT&T Illinois contended that the Commission analysis should start with the purpose that Section 13-502(b) is trying to accomplish, not words. AT&T Illinois pointed out that even Staff had acknowledged that the definition of the term “service” in Section 13-203 of the Act is so broad as to be useless in determining product markets under Section 13-502(b) and that service means different things in different contexts. AT&T Illinois argued the Section 13-502(a) reference to a “tariff” is equally unhelpful because its tariffs contain literally thousands of rates and rate elements, and they cannot all be separate product markets. AT&T Illinois contended that, contrary to the Attorney General’s argument, it was irrelevant whether packages have been treated as “services” for purposes of the Alternative Regulation Plan. According to AT&T Illinois, the purpose underlying this provision of the Plan (i.e., delaying the inclusion of “new services” until the year following their introduction) has nothing to do with the determination of product markets. AT&T Illinois pointed out that the Commission adopted a broad, policy-oriented approach to defining the term “service” for imputation purposes in Docket No. 04-0461. Therefore, argued AT&T Illinois, the Commission can and should similarly define “service” in this proceeding using a case-by-case analysis and taking into account all of the relevant factors.

According to AT&T Illinois, the relevant factors in making competitive determinations under Section 13-502 support a service definition that identifies an appropriate product market. Product markets are defined by whether services are demand substitutes for one another. AT&T Illinois pointed out that stand-alone rate plans and package offerings are demand substitutes for one another; indeed, customers are switching from AT&T Illinois’ stand-alone offerings to its packages and to packages offered by competitors on a daily basis and have been doing so since 2001.

If the Commission were to make rate comparisons between AT&T Illinois’ stand-alone offerings and competitors’ packages, AT&T Illinois contended that the analysis has to be performed correctly, not the way the parties conducted it. The parties made the assumption that all stand-alone service customers: (1) make very few local calls, (2) do not subscribe to features, and (3) make no other use of the network. They then compared the amounts such customers would spend on just the network access line and a small amount of usage to packages that include unlimited usage, features and, in many instances, long distance calling.

According to AT&T Illinois, this type of analysis is not representative of AT&T Illinois’ stand-alone service customer base and does not result in an “apples-to-apples” comparison with competitive package offerings. AT&T Illinois argued that measured service customers are not necessarily customers who make only a few local calls. Moreover, AT&T Illinois pointed out that the data which allegedly demonstrates that most measured service customers make relatively few calls reflects line use, not customer use, and included both primary and second lines, which may be purchased solely for faxes or DSL-based Internet access. AT&T Illinois further stated that 70% of stand-alone service
customers purchase central office features. Finally, AT&T Illinois contended that stand-alone service customers make Band C (local toll) and long distance calls and these calling charges represent a substantial portion of stand-alone customers’ total telephone bills.

When stand-alone customers’ use of local calling, central office features, local toll and long distance calling are considered, AT&T Illinois contended that competitive packages are available at comparable rates, terms and conditions. According to AT&T Illinois, at that “spend” level, the Sage “Simply Savings Plan” is a viable alternative. This package costs $24.90 per month and includes unlimited local calling, five vertical central office features, and 100 minutes of intraMSA toll and long distance calling. In fact, AT&T Illinois pointed out, it would offer these customers more value, because, for approximately the same cost as AT&T Illinois’ stand-alone service, the customer would enjoy unlimited local calling and more central office features. Hello Depot and the Royal Phone Company offer unlimited local calling plans starting at $21.95, Comcast offers an unlimited local calling plan for $14.00, and RCN offers an unlimited local plan for $20 which includes a network access line, unlimited local usage and five central office features. AT&T Illinois pointed out other, somewhat more expensive, options that could still be attractive to stand-alone customers. For example, the Comcast Connections 180 package, at $32.95 per month, provides unlimited local calling, three central office features, and 180 minutes of intraMSA toll and long distance calling; and the MCI Neighborhood Connect package, at $33.95 per month, provides unlimited local calling, Caller ID, Call Waiting, 200 minutes of intraMSA toll and long distance calling, and voice mail service. According to AT&T Illinois, these packages provide additional value because they include unlimited local calling (as compared to AT&T Illinois’ measured rates) and extra features such as the voice mail included in the MCI package.

AT&T Illinois also argued that there were also numerous wireless and VoIP phone options that are economically priced, including a T-Mobile pre-paid plan that offers 30 minutes a month of “any distance” calling, voicemail and a range of vertical features for $10; a US Cellular plan that offers 400 anytime local minutes, plus unlimited long-distance and unlimited weekend minutes for $24.95; a Verizon Mobile “Pay As You Go” service which costs $0.25 per minute for the first 10 minutes and $0.10 per additional minute; and VoIP plans that allow anywhere from 100 to 400 anytime minutes anywhere in the United States for prices that range from $5.95 to $9.95 per month.

Finally, AT&T Illinois contended that approximately 50% of its stand-alone service customers spend more than the average – and many substantially more. Thus, a substantial percentage of this “above average” group of customers would find packages attractive. Although AT&T Illinois did not dispute that there are some stand-alone customers who spend less than $12.00 a month on telecommunications services, AT&T Illinois stated that they cannot be used as a proxy for the entire universe of stand-alone customers to justify a separate product market. According to AT&T Illinois, to do so would constitute legal error.
Based on these analyses, AT&T Illinois argued that its basic local exchange services more than meet the standards in Section 13-502(c)(2). Given the potential attractiveness of the Sage, Comcast, and MCI packages, as well as wireless and VoIP service, to the average and above-average users of telecommunications services among the Company’s stand-alone service customers, AT&T Illinois estimated that at least 25%-30% of the stand-alone service customers had attractive competitive alternatives. According to AT&T Illinois, this adds another 8% to the 66% who subscribe to AT&T Illinois’ service packages today – for a total of 74%.

AT&T Illinois contended that a more granular analysis is not required to protect at-risk customer groups. AT&T Illinois explained that stand-alone customers do not equate to low income or disadvantaged customers in need of regulatory protection. Low income customers are just as likely to be heavy users of telecommunications service and are just as inclined to subscribe to packages as any other customer group. In fact, according to AT&T Illinois, customers who make few calls over their wireline phones may, in fact, live in affluent areas and choose to make most of their calls from the office. Alternatively, they may be heavy cell phone users and limit their wireline calling.

In short, AT&T Illinois argued that the record does not support identifying stand-alone services as a separate product market, stand-alone customers as low use customers or stand-alone customers as being uniquely in need of regulatory intervention. To the extent there is a perceived need to protect the subset of customers who make little or no use of the network, AT&T Illinois stated that there are more effective, targeted approaches that would be consistent with Section 13-502 and would promote the Commission’s pro-competitive policies.

B. Staff’s Position

1. Measured Service

Staff contends that there is no competition for measured service customers in Illinois. A subscriber to measured service will be billed separately for each stand alone network access line, and will also be billed separately for each local call the subscriber makes. In contrast, bundled services consist of packages that offer an access line, unlimited local calling, a number of vertical features and occasionally unlimited long distance calling for a fixed price. Staff argues that the bundled service alternative makes economic sense for subscribers who make a large number of local calls, or who subscribe to and make extensive use of vertical services such as call waiting: i.e., measured service subscribers who make a significant number of local calls and/or who use vertical features will find it less expensive to subscribe to packages than continue with stand alone access and pay per use calling. On the other hand, subscribers who do not make a significant number of local calls,
or who do not make extensive use of vertical services, will not find it economic to subscribe to packages offered by AT&T Illinois. Competitors’ bundled services therefore are not, according to Staff, economic substitutes for AT&T Illinois’ measured service subscribers.

Staff asserts that even though AT&T Illinois has more than 800,000 residential measured service subscribers in MSA-1 (fully one-third of the total number of residential subscribers), no competitor is actively seeking to serve residential measured service customers. Staff, however, cautions the Commission that when considering the lack of competition for AT&T Illinois’ measured service products that the Commission should also consider that while no competitors are offering prices comparable to AT&T Illinois’ measured service offering, that this does not imply that there is not residence service in MSA 1 provided by competitors at rates comparable to those that would occur in a competitive market. Staff contends that competition for local measured service has not developed because AT&T’s access and local usage are currently priced in manner that makes it unprofitable for competitors to provide measured service at rates comparable to those offered by AT&T for low volume customers who do not also subscribe to vertical features. Staff notes that competitors are currently serving non-measured service customers and there is no reason to believe that these competitors could not serve low usage customers currently taking measured service in the event of that AT&T’s rates were corrected to better reflect those that would occur in a fully functional competitive market. As a result, Staff cautions that the lack of competitive offerings comparable to AT&T’s current measured service products does not imply that there is insufficient competition to prevent AT&T Illinois from exercising market power with respect to low usage residential customers.

Nevertheless, despite the evidence that competitors might be able to establish rates consistent with a fully functional competitive measured service market or even the possibility that some of competitors currently offered package rates might fall into this category, Staff contends that there is no concrete evidence that competitors rates currently are those that would prevent AT&T from raising its own rates above those that would occur in a fully functional competitive measured service market.

2. Response to ATT’s Arguments Concerning Measured Service

According to Staff, AT&T Illinois has not met its burden of proving that the measured service market is competitive. Regarding AT&T’s assertion that there are four providers - MCI, RCN, CIMCO Communications and CoreComm - that offer stand alone access with pay per use local calling, Staff argues that none of these so called competitors offer measured service to new customers in any meaningful sense. According to Staff, RCN and MCI have grandfathered their stand alone offerings, CIMCO Communications asserted in a
sworn pleading that it only serves business customers, and CoreComm’s Certificate was cancelled. Thus, Staff asserts that even though AT&T Illinois has 800,000 residential measured service subscribers in MSA-1 (fully one-third of the total number of residential subscribers), there is no evidence that any competitor is actively seeking to serve residential measured service customers.

With respect to AT&T Illinois contention that bundled packages of services are economically viable substitutes for basic access (i.e. measured local) services, Staff argues that the evidence presented in this case establishes that bundled services are not substitutable for measured service, inasmuch as bundled services are not offered at comparable rates, terms and conditions as measured service. Staff contends that current bundled service alternative makes economic sense for subscribers who make a large number of local calls, or who subscribe to and make extensive use of vertical services such as call waiting: i.e., measured service subscribers who make a significant number of local calls and/or who use vertical features will find it less expensive to subscribe to packages than continue with stand alone access and pay per use calling. On the other hand, according to Staff, subscribers who do not make a significant number of local calls, or who do not make extensive use of vertical services, will not find it economic to subscribe to packages offered by AT&T Illinois. Staff presents pricing comparisons for an AT&T Illinois stand alone access subscriber who makes 100 local calls a month in Access Area C. These show that the subscriber’s total monthly bill will be substantially less under AT&T’s current measured service rates than under AT&T’s current flat rate package service rates. According to Staff, this example demonstrates that for low volume local callers, bundled services, as provided by AT&T Illinois, are simply not a viable economic substitute for measured service and consequently should be treated as an economically distinct service for reclassification purposes.

Staff asserts that while AT&T Illinois witnesses have made extensive references to the effects of VoIP and wireless competition, the information regarding VoIP provided by AT&T Illinois is devoid of data on the number, size, or geographic distribution of VoIP providers in MSA 1. Staff further asserts that the wireless information provided by AT&T Illinois contains no specific credible evidence regarding the degree to which wireline customers in and throughout MSA 1 have actually substituted wireless service for wireline service, or instead use wireless service as a complement to wireline service. Staff, therefore, concludes that it remains unclear precisely where and how many such customers have substituted wireless or VoIP service for AT&T Illinois services in MSA 1, whether such information can reasonably be discerned with any degree of accuracy, and what determinations the Commission should make pursuant to the criteria in Section 13-502 depending on the resolution of these questions. Thus, the Staff advises the Commission against making any Section 13-502 determination based on VoIP and wireless provisioning at this time.
Staff is not advising the Commission to affirmatively conclude that wireless and VoIP providers are not competitors in the local exchange market. Staff notes, that it is almost certainly the case that AT&T Illinois has lost residential customers to providers of such services in MSA 1. It simply remains unclear precisely where and how many such customers have substituted wireless or VoIP service for AT&T Illinois services in MSA 1. For these reasons, Staff does not recommend that the Commission reach any conclusion regarding the propriety of including VoIP or wireless competition in its Section 13-502 competitive analysis.

3. Package Services

Staff contends that AT&T Illinois' reclassification of its flat rate residential local exchange service packages in Illinois MSA 1 is proper, and the Commission should not reverse it. Staff asserts that regardless of whether the Commission considers each exchange in MSA 1 separately, or aggregates exchanges to broader geographic areas, there were, as of December 2005, two or more carriers actually providing services that are functionally identical or substitute services for AT&T Illinois' flat rate residential local exchange service packages in each area. Thus, reclassification of flat rate residential local exchange service packages is, according to Staff, appropriate pursuant to Section 13-502 of the PUA and no party, according to Staff, has identified any compelling public interest concern that would dictate an outcome to the contrary.

Staff notes that the only systematic source of information regarding the prices that CLECs assess for services that substitute for AT&T Illinois flat rate residential local exchange package services are the tariffs these carriers are required to file with respect to these services with the Commission. However, in presenting an analysis of the tariffed rates, Staff cautions the Commission that consumers with preferences for bundled services (e.g., bundles of long distance and local service), might consider the prices at which both AT&T Illinois and its competitors offer services not at issue in this proceeding (for example, long distance service) when making their consumption choices for the services at issue. Similarly, Staff cautions that consumers might also consider the prices for services that are ancillary to the services at issue in this proceeding, but that are regulated at the federal level (e.g., federal subscriber line charges or end user common line charges). Thus, Staff asserts that while pricing information is available in this proceeding, that prices are an imperfect tool for assessing the substitutability of different providers’ service offerings. It is for this reason that Staff advises the Commission to consider the pricing information available to it, but to more heavily rely on and weigh actual provisioning activity in MSA 1, to the extent available, when making its determinations regarding whether AT&T Illinois properly reclassified its flat rate residential local exchange service packages in Illinois MSA 1.
Staff emphasizes the latter point as an important, even a vital, one. Staff contends that in the past, when no actual competitive provisioning of service was occurring, the Commission might have been compelled to rely upon hypothetical market contestability arguments—calling for an assessment of the potential for providers to compete in the absence of actual competition. Staff argues that, in fact, perhaps as a result of regulatory habit rather than a pragmatic assessment of current conditions, these arguments have, to a limited degree, been raised in this proceeding—even where evidence of actual provisioning exists. However, there is ample evidence in this proceeding in Staff’s view to demonstrate that such analyses, which require the Commission to assess the viability of firm business strategies, based on limited information, are inherently subject to substantial error. With respect to flat rate residential local exchange package services, the Commission need not make decisions in reliance upon hypothetical, theoretical, or speculative evidence, because it has actual provisioning information that largely obviates the need for, and indeed the relevance of, such evidence. That is, Staff contends that the Commission need not determine whether carriers might be able to serve the market because it now can simply observe that they are indeed serving the market.

Data derived from AT&T’s wholesale billing records and E-911 data, according to Staff, demonstrates that competitors do not rely on any single platform to compete with AT&T Illinois, but rather rely on a variety of platforms. Staff notes that, combined, these competitors were providing, as of December 2005, a significant percentage of the estimated total number of LEC lines in MSA 1, and of the estimated total number of non-measured service lines in MSA 1. According to Staff, these competitors provide service ubiquitously across MSA 1 with market shares of total LEC lines in each exchange.

Information provided by the larger CLECs in MSA 1, according to Staff, similarly demonstrates that such CLECs are providing service throughout MSA 1 as of December 31, 2005.

Staff points out that regardless of which source of information is examined, multiple competitors were, as of December 2005, providing residential local exchange service (although not measured service) in every exchange in MSA 1. As such, the provision of Section 13-502(b) requiring at least two, and in the great majority of exchanges, more than two, competitors providing packaged services is, in Staff’s view, satisfied. See 220 ILCS 5/13-502(b) (service or functional equivalent must be available from at least one competitor).

When examining the platforms used by competitors, Staff recommends that Commission consider the actual provisioning levels of UNE-P based providers, which obtain wholesale services priced at the cost a producer using the most efficient technology and
making the most efficient provisioning decisions would incur, to be strong evidence that AT&T Illinois’ has limited ability to exercise market power in the flat rate residential local exchange services market. Staff showed that according to AT&T Illinois’ wholesale billing records and E-911 data and data provided by the larger CLECs in MSA 1, competitors using the UNE-P platform were providing service in every exchange in MSA 1.

Staff also recommended that the Commission should consider the actual provisioning levels of UNE-L based providers, which obtain loops priced at the cost a producer using the most efficient technology and making the most efficient provisioning decisions would incur, to be strong evidence that AT&T Illinois’ has limited ability to exercise market power in much of the flat rate residential local exchange services market. Staff showed that large reporting competitors using the UNE-L platform served customers in a significant percentage of exchanges in MSA 1.

Similarly, Staff also recommended that the Commission should consider the actual provisioning levels of facilities based providers, which use their own facilities to provide service, to be strong evidence that AT&T Illinois has limited ability to exercise market power in much of the flat rate residential local exchange services market. Staff showed that large reporting competitors, using their own facilities, served many of the exchanges in MSA 1.

Staff recommended that the Commission consider the actual provisioning levels of LWC based providers, which use AT&T Illinois provided wholesale services and products purchased at negotiated rates, resale based providers, which use AT&T Illinois provided wholesale service purchased at AT&T Illinois rates less a wholesale discount, and third-party resale based providers, which use services purchased under various arrangements not in evidence, to be more limited evidence that AT&T Illinois has the limited ability to exercise market power in much of the flat rate residential local exchange services market. Nevertheless, Staff showed that, while carriers using resale based platforms were providing relatively little service, large reporting LWC and third party based resale providers served many exchanges in MSA 1.

4. Staff’s Response to Other Parties

As with respect to measured services, Staff asserts that it remains unclear precisely where and how many package customers have substituted wireless or VoIP service for AT&T Illinois services in MSA 1, whether such information can reasonably be discerned with any degree of accuracy, and what determinations the Commission should make pursuant to the criteria in Section 13-502 depending on the resolution of these questions. Thus, the Staff advises the Commission against making any 13-502 determination based on AT&T’s
assertions regarding VoIP and wireless provisioning at this time. Staff further argues that, In light of CLEC activity in the market for residential local service packages, there is even less need for the Commission to make the difficult determinations that it might otherwise need to make with respect to VoIP and wireless competition than there might be with respect to the measured service market.

Staff alludes to the fact that there has been much controversy surrounding the fact that the information relied on by the parties in this proceeding does not reflect competitive activity beyond December 2005 and further that certain intervenors appear to have concluded that this data, being all of several months old, is therefore stale and outdated. Staff contends that this criticism should not, however, cause the Commission to discount this data.

Staff recommends that, with respect to the timing of the information, the Commission should, while retaining its discretion over the process, make its evaluation based on December 2005 information. The December 2005 data constitutes, according to Staff, the best available evidence in this proceeding and that only through analyzing data as of a date certain can the Commission properly consider the propriety of AT&T Illinois’ reclassification filing, ensure that the parties are not faced with a “moving target,” and avoid the highly disruptive processes that ensue from a record that is constantly evolving.

The Commission should not, in Staff’s view ignore the evidence regarding competitiveness of the market today in favor of speculation of what might occur in the future. Staff asserts that UNE-P is currently available to CLECs in Illinois pursuant to Section 13-801 of the PUA, that intervenors have claimed that UNE-P is a viable and available competitive choice, that both the Attorney General and Data Net Systems sponsor CLEC witnesses that use UNE-P to compete in MSA-1, and that the evidence of provisioning activity in this proceeding shows that numerous carriers in addition to those sponsored by the Attorney General and Data Net Systems were, as of December of 2005, providing service throughout MSA 1 using the UNE-P platform. This information, according to Staff, provides concrete evidence of actual competition for residential services in MSA-1.

The Commission should not, according to Staff, determine AT&T Illinois’ competitive declarations to be improper because the continued availability of UNE-P is not absolutely certain and therefore competition in the residential local services market in MSA-1 might change at some uncertain time in some uncertain way. Staff argues that the Commission should decline to adopt this approach because regulatory obligations imposed upon any carrier are never indefinitely absolutely certain and requiring indefinite regulatory certainty imposes a standard for evaluation that would nullify the competitive provisions of Section 13-
502, because the Commission cannot know with any degree of certainty if AT&T Illinois’ obligations to provide UNE-P will change, how they might change, or what will occur if and when they do change, and because it is well established in Illinois that, regardless of an expert witness’s skill or experience, he or she may not state a judgment or opinion based on conjecture (Staff cites People v. Ceja, 204 Ill. 2d 332, 335; 789 N.E.2d 1228, 1243; 2003 Ill. Lexis 766 at 33; 273 Ill. Dec. 796 (2003) and Royal Elm Nursing and Convalescent Center, Inc. v. Northern Illinois Gas Company, 172 Ill. App. 3d 74, 79; 526 N.E.2d 376, 379; 1988 Ill. App. Lexis 668 at 9; 122 Ill. Dec. 117 (1st Dist. 1988).) The Staff furthermore argues that the Commission should not approach the uncertainty regarding the market in this proceeding in an inconsistent manner, on the one hand considering possible negative developments in competition that might arise in the future with respect to AT&T Illinois’ UNE-P obligations, while at the same time ignoring possible positive developments in competition in the future (the development of, for example, cable based VoIP offerings). Finally, the Staff argues that Commission should not make its determinations on the presumption that it erred in its determination regarding the requirements of Section 13-801 as such a course would unduly punish AT&T Illinois by imposing unbundling obligations on it and then ignoring the competitive fruits of those obligations.

Staff reports that there two sets of information regarding CLEC activity the Commission can rely on in this proceeding: the first set of information is based on a combination of AT&T Illinois’ wholesale billing records and carrier listings in the MSA-1 E-911 databases and the second set of information is based on data request responses provided by certain large competitive local service providers in response to Staff and the Commission data requests. Staff contends that notwithstanding apparent discrepancies in the two data sources, both sources - information from billing record/E-911 information supplied by AT&T Illinois, and the competitive information supplied directly by CLECs - yield the same conclusion: that AT&T Illinois appropriately reclassified its flat rate residential local exchange service packages in MSA 1. Thus, in Staff’s view, the two sources, despite their differences, support one another. Staff contends that, throughout this proceeding, the Attorney General has attempted to adduce evidence tending to demonstrate the E-911 information presented by AT&T in this proceeding cannot be properly relied on for purposes of evaluating AT&T Illinois’ competitive reclassification. Staff urges the Commission to disregard the Attorney General’s arguments regarding the validity and usefulness of E-911 data. Staff contends that the Attorney General’s investigations and analyses of the E-911 data have – perhaps contrary to design - provided the Commission with evidence that the E-911 data is, although admittedly not perfect, an extremely informative and valuable source of information on the state of local competition.

5. Staff’s Alternative Regulation Proposal
According to Staff, AT&T’s measured service offerings are priced in a manner that effectively prevents competitors from serving measured service customers. Staff notes that this problem – network access line rates that effectively prevent competition for measured service – is a function of the alternative regulation plan. Thus, to solve this problem, Staff recommends that the alternative regulation plan be revisited.

Staff recommends that the Commission should, upon request by AT&T Illinois or another interested party, initiate a rate rebalancing plan for measured service, Call Waiting, Caller ID and other recently reclassified services before these services are reclassified. Rate rebalancing could, in Staff’s view, be accomplished by re-opening the alternative regulation docket to allow AT&T Illinois more pricing flexibility for individual services. Staff contends that if the Commission allowed AT&T Illinois more pricing flexibility under the cap, for example up to 12% (instead of the current 2%), or allowed AT&T to consolidate price cap baskets, that AT&T could move access, local calling and vertical services rates more quickly towards costs than is the case now. After considering AT&T’s concerns regarding the effect of prejudging the outcome of an alternative regulation proceeding, Staff recommended that the Commission pursue rebalancing through an alternative regulation proceeding without any prejudgment in this proceeding as to the outcome of any alternative regulation proceeding.

As explained above, Staff contends that the Commission could allow AT&T Illinois to continue to classify its measured service and related service and product offerings as competitive under the belief that current competitors will limit or prevent AT&T from increasing its prices above those that would occur in a fully functioning competitive market. However, such an approach poses a risk to consumers in that there is not concrete evidence that competitors will, in fact, impose such limitation on AT&T’s ability to price its measured services. Staff’s proposal, in its opinion, permits the Commission to limit such risk. For example, Staff argues that rebalancing might be effectuated under an alternative regulations plan in a manner that would be revenue neutral for measured service subscribers on the whole, yet still result in more rationally priced measured service and vertical service rates which would lead to a solid basis for increased local measured service competition.

Furthermore, in Staff’s opinion, competitive classification of AT&T measured service rates, based on current rates, causes AT&T to run afoul of current imputation rules. Staff contends that reclassifying AT&T’s measured service as non-competitive and then allowing AT&T to rebalance its rates under the alternative regulation plan will not only remedy this violation, but afford AT&T the opportunity to rebalance rates in a manner that, relative to existing rates, better comports with the pro-competitive underpinnings of current imputation rules.

Staff argues that rates should be “rebalanced” to increase competition, that is, the charge for the access line should be increased and the usage charge reduced in a revenue neutral manner to
increase competition for these services. Staff points out that AT&T access charge rates under ALT-REG are far lower than all other ILECs in the state and that the Commission has established $20.39 as an affordable rate for small rural ILECS to charge for local residential phone service.

C. Attorney General’s Position

The AG agrees that there is no competition for measured service customers but rejects the “rebalancing” proposal. The AG points out that the intent of the legislature was that competition could replace regulation when it was sufficient to protect consumers. 220 ILCS 5/13-103(b). The AG argues that if rates must be increased in order to encourage competition, competition is not ready to replace regulation. The AG contends that a rate rebalancing docket to increase some rates, while decreasing others, misunderstands the reasons for the lack of competition and so proposes the wrong remedy. The data shows that the rate for the access line in access Area A for example would have to increase by several hundred percent to allow a CLEC using the LWC platform to compete. The AG asserts that the problem facing competitors is caused by the deregulation of the UNE-P service by the FCC and the sky-high LWC rate, and not by mispriced Illinois rates.

Dr. Selwyn discussed the drop in the number of residential lines provided by CLECs during the year 2005. The number of residential lines served by carriers other than ATT IL dropped from a high of 28% as of December 31, 2004 to 17% as of September 30, 2005, based on the figures presented by ATT IL, which purport to include wireline CLEC, cable, cable VOIP and independent VOIP service. Over the next three months, from September 30, 2005 to December 31, 2005, CLECs lost more of their market share. Reviewing the change in line counts from December 31, 2004 to December 31, 2005 for the carriers ATT IL identified as major competitors, Dr. Selwyn demonstrated that eight out of eleven CLECs have experienced significant line losses, with an overall line loss among these carriers that is consistent with Data Net Systems witness Joseph Gillan’s analysis that showed a 13-14% decrease in lines provided by both the UNE-P and the LWC.

Dr. Selwyn explained that changes in the rules governing the provision of wholesale services have resulted in this substantial decline in the provision of residential local service in MSA 1. In its “Triennial Review Remand Order,” the Federal Communications Commission eliminated the obligation of incumbent telephone companies such as ATT IL to provide wholesale switching, also referred to as the “UNE-P” to competitors at regulated, or “TELRIC” rates. Report and Order on Remand and Further Notice of Proposed Rulemaking,
FCC No. 03-36, 18 FCC Rcd 16978 (2003) (“Triennial Review Remand Order” or “TRRO”). AG Ex. 1.0 at 123-124. Effective March 11, 2005, federal rules allowed incumbent telephone companies such as IBT (or its parent, then SBC, now renamed ATT) to increase the wholesale rate for switching by $1.00, and to refuse to accept new wholesale switching orders. In Illinois, the $1.00 adder did not become effective until December, 2005, and was made retroactive in ICC Docket 05-0154. Neither the September, 2005 nor the December 31, 2005 data reflect the effect of this $1 adder.

Dr. Selwyn testified that the FCC gave carriers until March 11, 2006 to transition off the wholesale switch and authorized the incumbents to stop providing that service at regulated TELRIC-based rates as of that date. However, in Illinois, section 13-801 of the Public Utilities Act independently obligates IBT to provide the UNE-P wholesale service. 220 ILCS 5/13-801(d). Although the Commission has ordered IBT to continue to make the UNE-P available, ATT IL filed a complaint in federal court seeking to invalidate section 13-801 as preempted by the Telecommunications Act of 1996 and the TRRO. Although the Court stated that “the likelihood of success on this [preemption] issue favors SBC,” the court denied IBT’s motion for a preliminary injunction because “the loss of goodwill they [CLECs] face if SBC’s requested injunction is granted is likely to be far more devastating than anything SBC faces if its requested injunction is denied. . . . The innovation and competition which the FCC hoped to promote, and the public interest served thereby, will not be promoted if SBC is permitted to use the FCC order to cut off its competitors’ legs overnight.” Illinois Bell Telephone Co. v. Access One, Inc., et al., Slip Op. at 10, 14-15, Case No. 05 C 1149 (N.D. Ill., March 29, 2005)(attached as Exhibit 1). One year later, the case is briefed although a final decision has not yet issued.

As will be presented in more detail in connection with Section 13-502(c)(4), Dr. Selwyn expressed concern about the survival of the UNE-P provisioning method in light of the FCC action. He also explained that unlike the UNE-P, carriers using the LWC method will not be able to offer price constraining competition due to ATT IL’s control over the wholesale price paid by carriers to access its network. He analyzed the number of facilities-based residential lines in MSA 1, and concluded that they serve less than 7% of the total lines.

In connection with the geographic distribution of alternative carriers, Dr. Selwyn showed that the overwhelming majority of carriers are so small that they serve less than 1% of the number of residential lines in MSA 1. Only one carrier provides service to more than 5% of the lines. About half of the carriers (37), provide service to fewer than 200 lines, and only 8 provide service to more than 10,000 lines out of the more than 3 million residential lines in MSA 1. The AG submitted the testimony of Larry Haynes of New Millenium Telecom (AG Ex. 2.0), who described the pressures under which the small carriers operate, and the
small scale at which they try to eke out a business. Carriers with as few as 3,000 lines are constantly working to add lines to replace lines lost to “win-back” promotions. AG Ex. 2.0 at 3. An increase in wholesale costs can make it impossible for a business of this small size to compete and can push it into bankruptcy. Id. at 4, 5.

The AG maintains that the uneven distribution and in some areas insignificant presence of providers of residential service throughout the 118 exchanges that make up MSA 1 show that for consumers in many areas there is not a competitive market for local telephone service. In more than half (63) of the 118 exchanges in MSA 1, facilities-based providers have fewer than 2% of the CLEC lines, with 13 exchanges having no facilities-based service at all. Turning to the distribution of UNE-P lines, Dr. Selwyn showed that the majority of UNE-P CLECs provide service to fewer than 10 lines in the exchange, and the overwhelming majority serves less than 100 lines per exchange.

The AG also noted that the evidence for the Chicago exchange shows uneven competitive presence. Although cable companies offer telephone service in that exchange, there are significant portions of the Chicago exchange where cable telephony is not present at all. The AG concluded that the distribution of alternative carriers does not show vibrant competition in all parts of MSA 1.

As discussed in more detail in connection with section 13-502(c)(3)(4) and (5), the AG believes that the decreasing numbers of UNE-P and LWC lines may leave consumers with little more than cable and other facilities-based competition. Currently, facilities-based carriers serve only 6.2% of the lines in MSA

The AG concludes that if the UNE-P is no longer available to competitors, and the LWC and resale are the only non-facilities-based entry methods available, the Commission cannot expect competition to duplicate the protections inherent in regulation, which is the intention of section 13-502.

Section 13-502(c)(2): The availability of functionally equivalent services in the relevant geographic area and the ability of telecommunications carriers or other persons to make the same, equivalent, or substitutable service readily available in the relevant market at comparable rates, terms, and conditions.

2. Are Wireless and VoIP Services Substitutes or Functionally Equivalent to ATT IL Wireline Local Service?
Dr. Selwyn, on behalf of the People of the State of Illinois, addressed whether wireless services, Voice over Internet Protocol (VoIP) or other cable offerings are functionally equivalent to ATT IL’s services. He testified that wireless service is seen by the overwhelming numbers of users as a complement to, rather than as a substitute for ATT IL’s wireline local service. He pointed out that ATT IL’s own internal studies show that the vast majority of wireless consumers in ATT IL’s service territory take both wireless and wireline service. In addition, ATT IL and its affiliates market wireless and wireline services as complements. In response to the wireless survey offered by ATT IL witness Harry Shooshan, Dr. Selwyn found numerous deficiencies and biases, and in his Rebuttal Testimony Mr. Shooshan admitted that his study was not reliable or generally applicable evidence of wireless substitution.

Dr. Selwyn also pointed out the functional differences between wireless and wireline service. Wireless service quality is not consistent and often cannot be relied upon to provide a consistently clear connection, or to retain a connection (dropped calls). Wireless service is designed for use by a single person rather than a household, does not accommodate extension phones, cannot be used for home alarm systems, and 911 service is much less certain with a wireless phone location shown within a few city blocks (or 50 to 300 meters). Further, wireless service is offered with non-regulated or already competitive services such as long distance, toll calling, calling features and voice mail, and it is substantially more expensive than the wireline services at issue in this proceeding.

Dr. Selwyn also discussed the functional differences between VoIP and the wireline services that are the subject of this investigation. Internet telephony, or VoIP, has service quality and E911 problems that currently interfere with its ability to replace landline telephony. Dr. Selwyn explained that “[r]esidential customers access their VOIP service over an asymmetric broadband connection, either ADSL or cable modem.” AG Ex. 1.0 at 99. Therefore, the data going to the internet is considerably slower than the data coming from the internet to the customer, which can be a problem for telephone calls, which require almost simultaneous transmissions. Asymmetric connections on overloaded connections “can lead to pauses, clipping, packet losses, or latency delays in ongoing telephone calls.” Id. at 104. When the internet connection is shared within a household and used for internet activities other than VoIP, or the connection is shared along a street or within a neighborhood (the same cable run), one use may effectively trump the other, either seriously degrading or altogether preventing the concurrent use of both.”

The AG argued that VOIP service does not offer the same level of service as traditional landline service. The quality of the connection is not as reliable, access to 911 emergency services is less certain, alarm and medical monitoring equipment may not work, directory listings may not be available, and service loss in the event of a power outage are
all areas where VOIP services are not functionally equivalent to wireline service. All of these
differences affect consumers’ view of whether a VOIP line is a substitute or a complement to
traditional landline service, and explain why VoIP substitution is not widespread.

The AG offered the response to Vonage’s May 24, 2006 Initial Public Offering (“IPO”),
with the shares losing roughly one-third of their value within two days, as confirmation of
investor skepticism as to the financial and market viability of “over-the-top” VoIP. The AG
argued that such actual market results clearly deserve far greater weight than the
unsupported speculations being offered by IBT employees and outside experts.

In connection with VoIP substitution, the AG asserted that there is no evidence in the
record on the extent of VOIP substitution, and that IBT witness Harry Shooshan admitted in
his Rebuttal Testimony that “VoIP use is not yet widespread.” The extent of VOIP service
cannot be determined from IBT’s line count because IBT does not include VOIP companies
such as Vonage, SunRocket, Voice Eclipse, AOL or Skype in its listing of competitive lines.
The AG continued that to the extent that one can discern VoIP lines in the data, the ATT IL
data show a negligible number of non-UNE lines.

The AG emphasized that ATT IL, or its affiliates, can and do already provide wireless
and VoIP products and services. A competitive classification of local service will not affect
its ability or success in offering these competitive and non-regulated services.

The AG contends that while claiming that wireless and VoIP are viable competitive
threats, ATT IL has failed to quantify the extent of wireless or VoIP substitution. ATT IL did
not offer a cross-price elasticity study, despite the agreement of all economists that such a
study is ordinarily used to measure product or service substitution. The AG pointed out that
ATT IL collects data on why consumers discontinue service, but failed to use that data to
produce such a study. ATT IL’s evidence on wireless and VOIP substitution is at best
speculative and at worst, non-existent. IBT has not met its burden to prove that consumers
subscribe to these services as substitutes for landline local exchange service.

3. Are wireless, VoIP, or other services available at comparable rates, terms and
   conditions?

AG witness Lee Selwyn agreed with Staff witness Genio Staranczak and CUB
witness Anne McKibbin that the network access line and measured usage should be
considered products distinct from the sale of telephone services in packages. As Dr. Selwyn
pointed out, although measured service customers share some characteristics with bundled service customers, measured service “allows a consumer local calls charged on a per call basis and the security of 911 at a price that does not include an additional charge for functionality and uses that the consumer may not need, want, or use.” Both Dr. Selwyn and Dr. Staranczak testified that the local measured service market is separate and distinct from the bundled service market.

The AG asserted that ATT IL’s past practice indicates that it has historically considered packages of services “new” or different from existing services, such as measured service. Under the alternative regulation plan applicable to ATT IL’s non-competitive services, “new services” can be priced outside the price cap, and offered for a year before they are included in the price cap formula. It has reported packages of services as “new services” notwithstanding that they contained the same ability (functionality) to make and receive calls and utilize calling features as existing services.

Further, both Dr. Selwyn and Dr. Staranczak found that the companies cited by Mr. Wardin either do not offer measured service to new customers (Comcast, RCN, and MCI) or ceased offering residential service altogether (CoreComm and CIMCO). Dr. Selwyn concluded that CLECs are only competing for customers that purchase services in packages, and that ATT IL faces little if any competitive price pressure for its stand-alone basic local access line service that customers are purchasing for $7.05 to $13.50. The AG maintains that the Commission cannot lawfully classify services for which there are no competitive options as competitive.

The AG also addressed whether caller-ID, call waiting and other ancillary services should be classified as competitive or non-competitive. Under current rates, customers who purchase measured service can purchase other stand-alone services, such as vertical services or features. In 2001, the General Assembly directed that some residential vertical features offered by IBT be classified as competitive as of June 1, 2003. 220 ILCS 5/13-502.5(c). However, the General Assembly specifically excepted residential caller-ID and call waiting, which were retained as non-competitive and subject to the alternative regulation plan. Id. IBT’s reclassification of Caller-ID and Call Waiting as competitive are under review in this investigation.

The AG pointed out that the General Assembly specifically excluded both Caller-ID and Call Waiting from classification as competitive when other residential vertical services were allowed to be reclassified as of June 1, 2003. 220 ILCS 5/13-502.5(c). The General Assembly prohibited the Commission from further review of the reclassification contained in section 13-502.5(c) and only subjected “other services” to review under section 13-502. 220
ILCS 5/13-502.5(c) & (f). Accordingly, as a matter of law, the AG maintains that Caller ID and Call Waiting are non-competitive, and they are not subject to review under section 13-502.

Even if they are subject to review under section 13-502, however, the AG asserts that the evidence is clear that these services should not be classified as competitive. The market for Caller ID and Call Waiting is not competitive for measured service users, and in order for a customer to purchase either of these services from another carrier, the consumer must first subscribe to local access and usage from the carrier. The AG agrees with Staff witness Dr. Genio Staranczak that “[b]ecause an AT&T Illinois measured service subscriber cannot obtain vertical services from another provider, the Commission should treat vertical services and measured services similarly for reclassification purposes.”

The AG offered further evidence showing that there is insufficient competition to replace regulation of the price of vertical services. The price for the other vertical services that Section 13-502.5(c) allowed to be classified as competitive as of June 1, 2003 increased from $2.25 in 2001, prior to reclassification, to $5.99 per month by August, 2005, an increase of 166%. These price changes were adopted despite the fact that IBT’s so-called competitors (wireless and VoIP service) do not charge anything for these features, which have costs that are somewhere between de minimus and zero. The AG asserts that this is clear evidence that there has been no price constraining competition for these stand-alone vertical services. The alternative regulation plan has kept Caller-ID and Call Waiting prices at $4.84 (down from $5.00) and $2.00 respectively.

Caller-ID and Call Waiting were treated differently by the General Assembly in section 13-502.5. As a result, they are not subject to further review as to their status as competitive or non-competitive. In addition, the evidence demonstrates that there are no competitive alternatives for the substantial number of residential measured service customers who take Caller ID and Call Waiting in MSA 1. They cannot obtain these services from other providers without paying substantially more for packaged services. ATT IL’s history of substantial price increases for other vertical services further confirms that there are no price constraints on stand-alone vertical services.

The AG also agrees with the recommendation of Dr. Staranczak that the other services, such as directory listings, printed call detail, and non-sufficient funds check charges should be returned to the non-competitive classification. These services are elements of service that are currently available on a stand-alone basis to measured service customers and others, and consumers cannot obtain these services from any carrier other than the one from which they obtain their local service.
Measured service (network access and per call usage), stand-alone Caller-ID and Call Waiting, and other services are in a different product market from packages of services. There are no substitutes for those services available to consumers to (1) constrain AT&T’s prices and (2) offer consumers alternatives to AT&T’s services. These services should be returned to the non-competitive classification and to the alternative regulation plan.

The AG also assessed whether the packages of telecommunications services offered by other carriers were provided at “comparable rates, terms and conditions.” In examining the rates offered by alternative carriers identified by ATT IL witnesses and Staff witness Dr. Zolnierek, the AG concluded that the cited packages are not comparable to AT&T IL’s local service rates because (1) they include services in addition to the local services at issue in this investigation; (2) the prices are significantly higher than AT&T IL’s prices for local service both for measured service and for AT&T IL’s packages of local services; or (3) in many cases they impose undisclosed surcharges that significantly increase the bills consumers pay.

The AG demonstrated that the prices of all carriers cited by Staff as comparable, with the exception of Comcast Digital Phone, were above the ATT IL prices, and Comcast Digital Phone service is being phased out. Comcast is transitioning to its Digital Voice service, which is internet-based and which offers unbundled telephone service (without video or internet) for $54.95. If the customer also buys other Comcast products, like cable modem service or cable television, the price for telephone can decrease to $39.99, still significantly higher than the ATT IL prices for local service. The AG compares this to the ATT IL’s packages that are the subject of this investigation, at prices of $23.50 and $29.00 (plus the $4.50 federal EUCL charge) for unlimited local calling and three or six calling features. As Comcast transitions further off Digital Phone and onto Digital Voice, consumers will not have the option of the lower priced Digital Phone service.

The AG maintains that part of the problem is that alternative carriers such as Comcast price and package their services so that consumers must subscribe to the full panoply of services from network access, to twelve vertical services, to unlimited local and long distance calling, to voice mail in order to take VoIP service (Comcast Digital Voice). By packaging its telecommunications services this way, and only this way, Comcast and the other carriers do not offer alternatives to the local services that are the subject of this investigation. ATT IL can already price the services that are not subject to this investigation, such as long distance, toll, voice mail, and many vertical services, to respond to prices for these kinds of all-services packages. The AG points out that ATT IL does not assert that it has reduced the prices of any of these already competitive services in response to the cable-based (or other) offering.
Section 13-502(c)(2) requires that services be available at “comparable rates, terms, and conditions.” The full package that Comcast offers as its VoIP product is clearly not being offered on terms and conditions comparable to ATT IL’s local services. Further, the Comcast VoIP service is close to twice the price of ATT IL’s local services package. Compare Comcast VoIP at $54.95 to uSelect 3 or 6 at $28.00 and $33.50 respectively, including the EUCL. Even the fully bundled Comcast VoIP price of $39.95 is higher than these ATT& IL prices. Although these packages of long distance and other services may provide alternatives for those already competitive or deregulated services, they do not provide comparable alternatives to consumers who are interested in purchasing local services.

The AG also comments on ATT IL and Staff’s reference to Sage Telecom, which offers a package of services for $24.90. Sage will only offer service to a customer who already has an IBT line. In addition, although Sage’s price appears to be competitive with IBT’s uSelect packages, whereas IBT charges $4.50 as a federally authorized EUCL charge, Sage charges customers a $7.50 "FCC customer line charge." AG Ex. 1.2 at 19. This add-on charge is not presented in the advertisements of Sage (or of other carriers), but it affects the price paid by consumers for telephone services. A price that looks close to the ATT IL price may be significantly more expensive when the line charge, which is not disclosed to consumers, is added. Trinsic, a company cited by Dr. Zolnierek as offering a comparable local service product, imposes a $6.50 line charge. When these charges are included, the AG maintains that the prices offered by competitors are not comparable to ATT IL’s prices for local service both because they are higher and because they cover services that are not subject to this investigation.

In response to Staff witness Dr. Zolnierek’s price comparisons to the Enhanced Flat Rate Package, the AG pointed out that Dr. Zolnierek did not realize that the Enhanced Flat Rate Package, which is a section 13-518 statutory package, included two lines. Further, he did not note that ATT IL itself offers 2-line service for both its uSelect 3 and uSelect 6 services at a rate that is about half of the Enhanced Flat Rate Package, although they do not include toll calling. None of the packages that he presents as comparable to that package include two lines and therefore they are not comparable to the Enhanced Flat Rate Package. They are not relevant to IBT’s other local services packages because they all include local toll, which is already a competitive service. Clearly, IBT can already reduce its rates for toll service and the competitively classified vertical services, notwithstanding the classification of the local services at issue in this docket. The AG recommends that those packages should be disregarded in determining whether there are competitive alternatives for local service.

The AG also commented on the services that ATT IL cited in its Initial Brief as lower priced alternatives. One of them is not listed in the ATT IL line count exhibits, and the other
has a very small number of lines. The AG suggested that these companies are not large enough to provide a meaningful alternative to ATT IL.

4. Section 13-502(c)(3): The existence of economic, technology, or any other barriers to entry into, or exit from, the relevant market.

AG witness Dr. Selwyn testified that there are two entry models open to carriers that do not rely on another carrier to provide service (see Section 13-502(c)(4) below). The first is to lease only the UNE-loop from IBT, and self provision a switch. Dr. Selwyn provided a detailed explanation of the costs facing a carrier that chooses to use its own switch and only purchase the UNE-L from IBT. The AG maintains that his description, combined with the experience of Data Net Systems witness Martin Segal in developing a UNE-L entry model, demonstrate that the Commission should not expect any meaningful residential competition to emerge based on the UNE-L. Dr. Selwyn also noted that pre-merger AT&T had explored the use of UNE-L as an alternative to UNE-P, and concluded that this service strategy was not economically viable due to the costs of “backhauling” ILEC loops to AT&T switches. Dr. Selwyn provided copies of sworn testimony by pre-merger AT&T technical experts in support of this conclusion.

Dr. Selwyn testified that a facilities-based model of entry needs to have elastic supply so that the carrier can respond to price changes rapidly and economically. In industries with large fixed costs, such as telecommunications, a carrier that uses its own facilities must incur the cost to construct new transport, switching and "last mile" distribution infrastructure to expand its supply options. Among the costs unique to carriers who lease the UNE-loop but provide their own switching are: connections between the customer’s wire center and the location of the switch, construction of a fiber ring or lease of transport facilities, and fixed and recurring construction costs associated with collocations. The complexity of these arrangements is illustrated in the diagram on page 145 of AG Ex. 1.0. These costs are largely fixed, and carriers benefit as there are more customers available over whom to spread the costs. An absence of economies of scale provides an additional barrier to entry and expansion for facilities-based CLECs.

Dr. Selwyn demonstrated that 90% of facilities-based lines are in wire centers that include service to fewer than 100 lines per carrier. When the cost of transporting traffic from a wire center to the switch cannot be spread over a sufficient number of individual residential lines, the fixed cost to serve cannot be spread among a sufficient number of customers to keep prices low. Indeed, the former AT&T, when it operated as a CLEC, concluded that even though it was the largest CLEC in the nation (and the largest CLEC in Illinois), and it already had switches that it used to serve enterprise customers, it was uneconomic to offer
mass market service based on a UNE-L entry strategy.

The second entry model requires that an entire parallel system exist, such as that developed for multi-system cable television service operators. Although cable companies tried to enter the telephone market using circuit-switched technology, their line counts remained low. The Comcast Digital Phone service is based on circuit-switched technology. Comcast is now transitioning its circuit-switched service to an Internet-based service. As a cable operator, Comcast has costs and resources that are unique to it, including the presence of an upgraded distribution plant to accommodate high-speed cable modem internet service. However, the VoIP service it offers is priced substantially higher than its Digital Phone service and has the limitations of a VoIP product.

The AG maintains that there are two ways for carriers to enter the residential market to offer competition to ATT IL’s -- relying on ATT IL’s loop and building a parallel infrastructure. The large fixed costs and insufficient economies of scale available to providers of residential service make facilities-based competition uneconomic. Finally, the cable operators, such as Comcast have opted to resort to VoIP telephone service, which lacks the reliability of circuit-switched service and which is priced at the upper end of the IBT price for all distance service. The evidence shows that Comcast does not offer a VoIP service at a rate that covers only local service, and therefore is not in the same market as the IBT services at issue in this investigation.

5. Section 13-502(c)(4): the extent to which other telecommunications companies must rely upon the service of another telecommunications carrier to provide telecommunications services.

AG witness Dr. Selwyn testified that an effectively competitive market requires that suppliers respond quickly and efficiently to cost and price changes. Competitive carriers must be able to expand output rapidly and economically in order to check the dominant carrier’s price increases.

Carriers that rely on the incumbent for loops, switching, transport and other wholesale inputs can, in principle, rapidly expand or contract their output, simply by ordering more or less wholesale service. Dr. Selwyn point out that when the wholesale price is set independently of the retail price, carriers’ wholesale costs will not change even if the incumbent increases its retail price, enabling the competitive carriers to constrain retail price increases. However, when the incumbent wholesale provider can set the wholesale price independent of regulation, it can control the margin between the alternative carriers’ costs
and revenues by setting the wholesale price relative to its own retail prices.

As referenced earlier, Dr. Selwyn described the Federal Communications Commission order that, as of March 11, 2005, allowed incumbents such as ATT IL to withdraw its UNE-P service or change the TELRIC rate. “As a result, CLECs must now either provide their own last mile (‘loop’) and switching arrangements in their entirety, or combine their own switching with UNE-Loops leased from the ILEC…. Alternatively, CLECs may enter into a ‘commercial agreement’ with each ILEC for a ‘market priced’ version of UNE-P. SBC refers to this as its ‘Local Wireline Complete’ (‘LWC’) wholesale service.” Prior to March 11, 2005, CLECs could purchase UNE-P service at regulated prices, and in Illinois, CLECs can still do so under section 13-801 of the PUA. 220 ILCS 5/13-801. However, IBT has sought to preempt section 13-801, so the future availability of the regulated section 13-801 price is uncertain.

The AG emphasized that ATT IL witness Dr. Taylor testified that when setting their wholesale rates in commercial contracts like the LWC, incumbents set wholesale prices so as to preserve their retail revenues. He testified that the “trade-off” considered by an ILEC in setting the wholesale rate is “1) serving retail customers (and earning retail revenue) and 2) earning wholesale revenue instead and achieving a more intensive (and perhaps, more efficient) utilization of its existing network.” ATT IL Ex. 3.1 at 52-53. He further emphasized that: “every unit of a network element sold by the ILEC (as a UNE or otherwise) at wholesale represents an additional opportunity for retail sales by the CLEC and, correspondingly, the sacrifice of retail sales by the ILEC.” Id. at 53, fn. 40 (emphasis added).

The AG maintains that the price set for the LWC reflects the incumbent’s intent to protect its retail revenues by ensuring that revenues from wholesale service are equal to or more than revenues for retail service. Although IBT’s most popular packages of services (uSelect3 and uSelect6) are priced at $22.00 and $29.00 (access area A) and $23.50 and $29.00 (access areas B and C), the 2006 price per line under the LWC is $27.00 - $27.50, for all but three carriers with a one dollar increase scheduled for 2007. Sage, as the first carrier to sign the LWC, has a slightly lower rate ($25.00 per line) and MCI has a slightly lower rate which incorporates a volume discount that other carriers can also obtain. Id. None of these carriers receive an LWC base rate that is lower than the uSelect3 rate. The AG asserts that it is clear that they cannot offer price constraining competition if their wholesale rate exceeds IBT’s current retail rate.

The AG asserts that this model encourages price increases while undermining the ability of competitors to constrain the incumbent’s price increases. The LWC prices are the
same for all 13 SBC/ATT states. Although certain discounts of up to $3.00 per line can apply, even if a carrier qualified for the full $3.00 in discounts, the LWC price for 2006 is still more than the retail price of IBT’s uSelect3 package ($27.50 - 3.00 = $24.50 compared to $23.50). In 2007 the disparity will be even greater.

In response to Dr. Selwyn’s testimony pointing out the shrinking margin between carriers’ wholesale costs and IBT’s retail prices, IBT witness Mr. Wardin suggested that Dr. Selwyn should have included the $4.50 “end user common line charge” or EUCL that consumers pay for each package. The rates subject to this investigation do not include the EUCL, which is a federal charge. Although such a charge may provide a revenue opportunity for carriers, advertising materials do not reveal it, and if consumers are not informed of it in marketing and advertising materials, consumers will be subject to unknown charges. As indicated elsewhere, the AG showed that for Sage Telecom, the undisclosed charge increases the bill for its $24.50 package (so often cited by IBT) by 30% or $7.50 to $32.00. Without such non-disclosed charges, Sage could not offer service at $24.90 while paying $25.00 just for the loop, the switch, usage and transport.

The AG asserts that carriers that access ATT IL’s wholesale facilities under the LWC to provide service will not be able to impose price constraining competition, and are not viable so long as their wholesale price is not set independently of IBT’s retail prices.

Dr. Selwyn also discussed carriers that continue to utilize the UNE-P entry method and maintained that they are not in the same price squeeze as those who have switched to the LWC. However, given the FCC’s decision relieving ATT IL of the obligation to offer that service at TELRIC rates and ATT IL’s pending complaint in the United States District Court challenging it obligation to offer the UNE-P under state law, it is not surprising that the percentage of UNE-P lines has decreased from 42% of competitive lines on September 30, 2005 to only 18% on December 31, 2005, only three months later. The majority of carriers that rely on ATT IL facilities to provide service now must pay the substantially higher LWC price. The AG maintains that consideration of these factors leads to only one conclusion: the LWC price cannot provide price constraining competition in MSA 1 and does not justify the classification of ATT IL’s residential local service as competitive.

6. Section 13-502(c)(5): any other factors that may affect competition and the public interest that the Commission deems appropriate.

The AG maintains that Section 13-502(c)(5) requires the Commission to consider “any other factors that may affect competition and the public interest,” and that a key factor
affecting competition is that the FCC recently relieved ATT IL and other incumbents of their obligation to provide one provisioning method, the UNE-P, at regulated rates. Although Illinois law provides a separate and independent UNE-P obligation pursuant to section 13-801(b)&(d), ATT IL filed a complaint in United States District Court seeking an order that section 13-801 is preempted by the FCC, and that action is pending. The Commission should also consider that the number of UNE-P provisioned lines is rapidly declining notwithstanding that UNE-P is still available in Illinois and is significantly less costly than its replacement product, the LWC. Clearly the change in the legal status of UNE-P and its replacement by the LWC has “affected competition.”

The AG points out that another factor affecting competition is that the cost to provide non-facilities based service has increased. For carriers using UNE-P, the cost to access IBT’s network increased by $1.00 per line in December, 2005. Carriers face a further increase up to $28.50 per line per month if they use the LWC price to provide service. In any event, the LWC is not being widely used to provide service. Six of the ten carriers using the LWC in Illinois serve fewer than 200 customers. The record shows that biggest user of the LWC, in fact serves more than a third less lines in Illinois than it served using the UNE-P in 2004. These changes in wholesale cost certainly are factors that can be expected to affect competition.

The AG pointed out that the General Assembly stated that competition in all telecommunications markets should be pursued as a substitute for regulation “consistent with the protection of consumers.” Id. at 13-103(b). The General Assembly clearly expected that competition “will increase innovation and efficiency.” 220 ILCS 5/13-102(f). It was less certain of the other anticipated benefits of competition, such as reduced prices, increased investment, creation of new jobs, and attraction of new businesses to Illinois. Id. The AG asserts that these anticipated benefits are matters that the Commission can rightfully consider in connection with factors that may affect the public interest.

The AG stated that it is far from clear whether competition has resulted in lower prices for consumers. Although the prices of the services subject to this docket have been controlled by the alternative regulation plan, the prices of other services that are classified as competitive or are not regulated, like vertical services, directory assistance, per minute local toll rates, and voice mail have all increased, in some cases considerably. In addition, the AG cites evidence concerning the level of investment, creation of new jobs, and attracting new business as disappointing. For example, the number of ATT IL employees dropped by 4,581, or 29% from December, 2001 to December, 2005, although ATT IL pointed out that when its affiliates’ employees are included, a 4,425 drop in jobs was “only” a 19% reduction. ATT IL’s investment in net plant has declined by $1.4 billion or 25% from December 2001 to December 2005. Shareholders’ equity “has plummeted from $2.5 billion as of the end of 2001 to only $1.587-billion as of the close of 2005, a drop of 36.5%.” Finally, it is clear that
new competitive telecommunications businesses arose in Illinois between 2001 and the present, but the future of those businesses that rely on UNEs or the LWC to provide service is in jeopardy. See sections III and IV above. These factors affect the public interest in reliable and affordable telephone service, show that competition has not led ATT IL to reduce prices, or to increase investment or jobs, and do not support a competitive classification in this docket.

In response to the Staff suggestion that competition has not developed for measured services because ATT IL’s local rates are “too low,” the AG pointed out that when a company is reporting a 21.04% return on equity, the notion that prices are too low must be rejected in light of the statutory requirement that rates must be just and reasonable. See Citizens Utility Board v. ICC, 276 Ill.App.3d 730, 736-737 (1st Dist, 1995). 220 ILCS 5/13-103(a) (the policy of the State of Illinois is that telecommunications services should be available at “just, reasonable and affordable” rates). Recognizing that ATT IL does not need additional revenues, Staff witness Dr. Staranczak insisted that any rate rebalancing be “revenue neutral.”

In assessing whether ATT IL’s “low” residence network access rates are appropriate, the AG urges the Commission to consider that since 2000, IBT has shed 29% of its workforce, inflation has been low, and telecommunications productivity has been high. Nevertheless, the network access line rate has not been reduced. If there are no competitors for these services, it could be that the costs incurred by other market participants are higher than IBT’s and preclude them from lowering their prices. In that case, there is no public interest in increasing measured service rates because competitors’ cost structure will insure that they will not be able to match IBT’s prices.

The AG states that competition was expected to develop to the extent that it could replace regulation, consistent with the protection of consumers. 220 ILCS 5/13-103(b). If rates must be increased in order to encourage competition, competition is not ready to replace regulation, and the competitive classification IBT has made must be reversed.

The Staff suggestion that a rate rebalancing docket be opened to increase some rates, while decreasing others, misunderstands the reasons for the lack of competition and so proposes the wrong remedy. Indeed, assuming that the $27.00 LWC price identified in this docket is used as a basis for rate rebalancing, access line rates would have to increase by $15.45 (from $2.08) in Access Area A, increase by $12.47 (from $5.53) in Access Area B, and increase by $9.00 (from $9.00) in Access Area C. AG ALJ DR Ex. 2 (Attorney General Request GS 1.02). The amount of revenue neutral rebalancing necessary to achieve this result shows that it would be futile to attempt such an exercise. The AG asserts that this
example shows that the problem facing competitors is caused by the deregulation of the UNE-P service by the FCC and the sky-high LWC rate, and not by mispriced Illinois rates.

In connection with raising prices to encourage competition, Dr. Selwyn stated: “If the only way to stimulate competition is for the incumbent monopoly to raise its prices to supracompetitive levels, then perhaps we must all face the reality that the residential telecom market may just not be particularly competitive. For certain, there can be no public interest justification for permitting IBT to increase its already excessive earnings in pursuit of some vague notion that, perhaps someday, the thus-far elusive competition will materialize to bring prices back down to reasonable levels.”

The AG maintains that the Commission return measured service and other stand-alone services to the non-competitive classification, and reject the “policy” choice to attempt to rebalance ATT IL’s rates as ill-advised and not based on an accurate assessment of market conditions. The amount of rebalancing necessary to assist LWC competition makes that approach to increasing competition both anti-consumer and practically impossible.

The AG also points out that Section 13-502 does not contain an imputation requirement, which is the basis of the Staff rebalancing recommendation. Although section 13-505.1(a) requires carriers to “satisfy an imputation for each of its own competitive services...” section 13-502(d) only requires the filing of “a study of the long-run service incremental cost underlying such service” and that the tariffed rates and charges for the services exceed the long-run service incremental cost of providing the service. 220 ILCS 5/13-502(d). Under section 13-502, the inquiry ends there. If the Staff wants to pursue rate rebalancing, it must do so under a different statutory provision and in a different docket.

D. Position of Cook County States Attorney

1. Measured Service

CCSAO contends the record in this case should lead the Commission to conclude that there is no meaningful competition for consumers seeking a residential access line by itself and paying for usage ala carte. The CCSAO’s position was that the access line classification should be reclassified as noncompetitive. The CCSAO pointed out that initially in the case, the only party advocating in testimony that the residential access line be declared competitive was AT&T Illinois. CUB later joined them in advocating this in their joint proposal. However, the CUB witness at the hearing on the joint proposal stood by their testimony. The CCSAO noted that the Commission needs to look at the record evidence in
this case which includes CUB’s earlier testimony on this issue. In its brief, the CCSAO pointed to the testimony of CUB witness McKibbin, Staff Witness Dr. Staranczak and AG witness Dr. Selwyn in support of its position.

The CCSAO contends that the record in this case shows clear issues with respect to competition for the local access lines and usage. Other than AT&T Illinois, there was initially no other party that contends that a stand-alone basic access line should be competitive based on the actual evidence in their testimony. While CUB supports the competitive declaration in their testimony in support of the Joint Proposal, the CUB witness at the hearing stood by their earlier testimony in the case. However, these customers will be subjected to the possibility of rate increases under the joint proposal. The CCSAO argued that the Commission should reject AT&T’s contentions in this area and reclassify the local access line and local measured usage. Clearly, the access line should remain noncompetitive and subject to alternative regulation.

2. Package Plans

The CCSAO contended that a more challenging area in this case involves packages offered in MSA1. The CCSAO notes that there are competitors offering packages of services to consumers in MSA1. AT&T Illinois presented testimony that packages were properly classified as competitive. Dr. James Zolnierek, who testified on behalf of the ICC Staff, was of the opinion that AT&T had properly reclassified residential local service packages in MSA1 as competitive. ICC Staff Ex. 2.0 at 90-96, ICC Staff Ex. 9.0 at 4.

However, the CCSAO pointed out that Data Net Systems witness Joseph Gillan concluded that: “The Commission should deny AT&T Illinois’ request for a competitive classification of its residential services in the Chicago LATA.” Data Net Systems Ex. 1.0 (Gillan) at 39, lines 24-27.

Further, the CCSAO noted that Dr. Selwyn indicated in his testimony that bundled services and service packages were not sufficiently competitive to warrant reclassification at this time. AG Ex. 1.0 (Selwyn) at 52, lines 1-15.

While the issues with respect to packages are a closer call, the CCSAO contends that AT&T Illinois has not met its burden of proof showing that the market is competitive within the meaning of the Public Utilities Act. Further, the Commission should not consider VoIP or Wireless services as the functional equivalent at this time. With respect to the Act, we
further urge the Commission to use its discretion and find that, given the lack of facilities based providers, that AT&T Illinois has not met its burden of proof.

E. Data Net/ True Comm Position


Local telephone competition has been authorized by the Illinois General Assembly since January 1, 1989. Public Act 84-1063, Section 13-405, effective January 1, 1986. Despite the presence of numerous telecommunications carriers in Illinois, including such large companies as AT&T Communications of Illinois, Inc. (“AT&T”), MCI Communications (“MCI”), Sprint Communications (“Sprint”), and GTE, Corp. n/k/a Verizon (“Verizon”), and various smaller carriers, for years there remained a dearth of competition to Illinois Bell’s local services, and most particularly to local residential consumers.

Confronted with the market inability to develop residential competition, the ICC undertook a landmark proceeding, under Section 13-505.5 of the Illinois Act, for the purpose of opening mass market competition. The ICC authorized competing telecommunications carriers to lease the facilities of Illinois Bell and to utilize those facilities for the provision of competitive local services. AT&T Communications of Illinois, Inc., ICC Docket No. 95-0458/95-0531, Order, June 26, 1996. This was the nation’s first order authorizing the use of the incumbent local exchange carrier’s facilities to provide an unbundled network elements platform, or UNE-P, to competing carriers. In its desire to move local competition forward, the ICC required Illinois Bell to provide the platform within 30 days, or by July 26, 1996. Ibid, p.78.

Despite the ICC’s and the General Assembly’s interest in developing a competitive local market, Illinois Bell was not as enthusiastic. Through a series of delays and violations of ICC orders, Illinois Bell refused to provide the platform to competing telecommunications carriers. In response, the ICC conducted a series of compliance proceedings, repeatedly finding Illinois Bell to be in violation of the ICC’s orders, and mandating that Illinois Bell immediately make the UNE-P available. [4] Nevertheless, Illinois Bell continued to oppose the provisioning of the platform and the first UNE-P line was not issued by Illinois Bell until October, 2000. Data Net Systems Ex. 2.0 (Segal), p. 13.

What is most informative about this lack of market development is that although local competition had been fully authorized since January, 1989, the combined provision of local
competitive lines from facilities-based providers (since 1989) and resale providers (since 1995) constituted a combined total of only 7% of the local lines in Illinois by June 30, 2000. AT&T Illinois Ex. 1.0 (Wardin), Schedule WKW-8 (FCC Report - Local Telephone Competition: Status as of December 31, 2004, Table 7).

Frustrated with the delay in developing local competition, particularly with the total absence of local residential competition, the Illinois General Assembly enacted Public Act 92-0022, effective June 28, 2001. The main focus on this legislation was Section 13-801, codifying the previous ICC orders requiring Illinois Bell to make its UNE-P facilities available to competing carriers for the provisioning of local competition. Data Net Systems Ex. 1.0 (Gillan), p. 5.

The ability to provide competitive services to local residential customers changed dramatically with the Federal Communications Commission (“FCC”) reversing federal policy in December, 2004, announcing the termination of competitive carriers' federal rights to access the UNE-P under the Telecommunications Act of 1996 (“Federal Act”). The FCC ordered that competitive carriers could not add any new UNE-P lines after March 11, 2005, and that the carriers had until March 11, 2006 to make other arrangements for their embedded base of UNE-P lines. In the Matter of Unbundled Access to Network Elements, Order on Remand, 20 F.C.C.R. 2533, Released February 4, 2005. With the elimination of the facilities through which local residential competition was provided, both AT&T and MCI announced that they were exiting the marketplace. Within the year, both ceased independent competitive operations and were acquired by incumbent local exchange monopolies, AT&T by SBC and MCI by Verizon. However, even before these large competitors exited the marketplace, a dramatic reversal in local competition was evident.

Within six months of the FCC’s Order on Remand, there was a decline in the number of competitive local lines in Illinois for first time since before the UNE-P was initially provisioned. By June 30, 2005 there was a loss of over 100,000 lines, dropping to the lowest competitive level in over two years. Data Net Systems Cross Ex. 7, FCC Report - Local Telephone Competition: Status as of June 30, 2005, Table 9 (Comparing June, 2005 with December, 2004 and with June, 2003).

The extensive, but unsuccessful efforts to find alternative means to continue local residential competition provides extensive market evidence that without the ability to lease the incumbent’s local facilities through cost-based UNE-P facilities, mass market competition to local residential customers is not economically viable. Illinois Bell offers an unregulated UNE-P product, which it calls local wholesale complete (“LWC”). However, free of the regulatory restrictions to prevent anticompetitive conduct, Illinois Bell has doubled the
charges for the unregulated UNE-P, [5] and charges a “wholesale” UNE-P rate that exceeds Illinois Bell’s retail residential offering. [6]

The history of local residential competition shows not only that such competition was absent prior to the initiation of the UNE-P, but also that the withdrawal of the federal rights to the UNE-P, and the threatened elimination of state rights, has reversed the development of a competitive local residential market, depriving it of effective competition. This is confirmed through the data presented in the instant proceeding reflecting the market changes over the past year since the UNE-P has been undermined. Whereas local residential competition was once in the process of development, it is presently in the process of withdrawal.

Data Net argues that the application of actual market behavior to the criteria of Section 13-502 establish that Illinois Bell’s residential services in MSA-1 are not reasonably available from functionally equivalent or substitute services sufficient to classify the services as competitive. Review of the statutory criteria, and its enumerated minimum considerations, to the actual market conditions for local residential services show that Illinois Bell has not met its statutory burden of proof to classify these services as competitive.

The statutory criteria are expressed in Section 13-502 of the Illinois Act. In applying this legislative standard, the ICC has held that it is not sufficient simply to show the presence of other service providers in the marketplace. Local competition developed in business services long before, and to a greater extent than, residential services. In 1995, when Illinois Bell sought to reclassify its local business and operator services as competitive, it argued that there were numerous other providers to these services, as shown by the double digit market shares of the competitive carriers and the decreasing Illinois Bell revenues. Although the hearing examiner’s proposed order recommended that these services be reclassified to competitive, the ICC rejected the competitive classification.

On appeal, the Illinois Appellate Court affirmed the ICC’s decision. The Court held that the requirements of Section 13-502(b) must be read in the context of the entire statute to ascertain and give effect to the intent of the legislature. This included considering the plain and ordinary meaning of the statutory language in the overall context of the reason and necessity for the statute and its stated purpose. *Illinois Bell Telephone Co. v. ICC*, 282 Ill.App.3d 672, 676, 669 N.E.2d 628, 630-31. In analyzing and applying the statutory language of what is “reasonably available,” the Court looked not only to the statutory classification language, but also to the purposes of the Illinois Act, as expressed therein.

Based on the Act’s declaration that competition should be allowed to function as a
substitute for regulation only when consistent with the protection of consumers, 220 ILCS 5/13-103(b), it was reasonable for the Commission to conclude that the legislature intended to allow a provider to classify a service as competitive only when competition had developed to the extent that regulation was no longer necessary. Allowing a provider to classify a service as competitive prior to the development of a competitive market for the service would enable the provider to enjoy the benefits of a monopoly without the concomitant regulation which the legislature has declared is necessary to protect the interests of consumers. Accordingly, the Commission’s conclusion that it must examine actual market behavior in order to determine whether a competing service is reasonably available was not clearly erroneous, and we defer to this interpretation. Ibid, 282 Ill.App.3d at 677, 669 N.E.2d at 631.

Applying the legislative language and the context of the statute, the Court agreed with the ICC that the data “did not conclusively show an assured and effective competitive structure.” Ibid, 282 Ill.App.3d at 676, 669 N.E.2d at 630. Illinois Bell argued that there was no record evidence that the market lacks effective competition, while Illinois Bell presented evidence of competitors’ double digit market share and Illinois Bell’s declining revenues in a market where overall revenues were on the rise. But the Court agreed with the ICC that such evidence was insufficient to “clearly establish that competition in the market for these services is sufficient to function as a substitute for regulation.” Ibid, 282 Ill.App.3d at 679, 669 N.E.2d at 633.

The Illinois General Assembly once again revisited the issue of local telephone competition in 2001. The legislature imposed on Illinois Bell specific additional obligations to competing carriers. Furthermore, the legislation amended Section 13-502, adding a new subsection (c) requiring the ICC to take into consideration certain minimum factors on any request to reclassify any remaining noncompetitive services (i.e. residential) as competitive.

The application of these minimum considerations, in the context of the 2001 rewrite, and to the facts in this record, do not “conclusively show an assured and effective competitive structure ….. sufficient to function as a substitute for regulation.”

Data Net argues that a review of the actual market data confirms the severe diminishment of competition in local residential services. There are primarily three means by which other telecommunications carriers compete with Illinois Bell for the provision of local residential services in MSA-1: 1) resale; 2) the unbundled network element platform, either regulated (“UNE-P”) or unregulated (“LWC”); and 3) through the use of a competitive carrier’s own facilities. As previously noted, resale of local residential services has failed to provide an effective competitive alternative to Illinois Bell residential services. The actual data provided by Illinois Bell confirms that only a handful of competitive lines are provided through the resale of Illinois Bell residential services. Data Net Systems Cross Ex. No. 3. Resale provides no effective market behavior sufficient to substitute for regulation.
Data Net contends that competitive provisioning through use of the unbundled network elements platform brought competitive carriers into the local residential market. However, that market development did a complete reversal in 2005 with the FCC decision to eliminate the federal rights to the UNE-P. AT&T withdrew as a competitor to Illinois Bell and was eventually acquired. This alone resulted in the loss of hundreds of thousands of competitive residential lines.

This narrows the competitive options to facilities-based competition. Despite this competition being authorized since 1989, there has been no showing by Illinois Bell of any significant success in providing effective facilities-based competition to local residential services. Illinois Bell’s evidence of facilities-based providers rests primarily upon the services offered by Comcast and RCN. See Data Net Systems Cross Ex. No. 3, AT&T Illinois Response to Data Net Systems DR 2.2(b), Data as of December 31, 2005. However, the total number of lines of these two carriers combined does not amount to the number of competitive residential lines lost to the UNE-P providers in the past year alone. Even within the RCN and Comcast figures, the number of residential lines over their own facilities has decreased over the past year. In additional to these market facts, the nature of their service offerings further reflect they do not provide an effective competitive alternative to Illinois Bell’s residential services. This data fails to meet the statutory criteria requiring “an assured and effective competitive structure … sufficient to function as a substitute for regulation.” Illinois Bell Telephone Company, supra.

Data Net joins in the AG’s arguments that Illinois Bell makes speculative claims that wireless and VOIP services offer effective competition. It argues that these allegations are not only unsubstantiated by actual evidence, but they are rebutted by the facts of record.

The data of record establishes that the market options to Illinois Bell’s residential services rest primarily between carriers dependent upon the UNE-P and those utilizing their own facilities. Data Net Systems Ex. 1.0 (Gillan), p 7. Facilities-based competition for residential services has become a sizeable segment of the local competitive market not through its growth, which diminished over the past year, but through the drastic decline in local residential competition from the loss of UNE-P competitors. Application of the statutory criteria, in particular the minimum considerations required by the 2001 rewrite, shows that Illinois Bell has not met its burden of proof to establish effective local competition “sufficient to function as a substitute for regulation”.

Data Net asserts that although competitive carriers utilizing UNE-P facilities may provide service throughout the Illinois Bell territory in MSA-1 while UNE-P provisioning exists, as above discussed the market conditions for the provision of competition through the use of UNE-P is in decline and its existence is threatened. A review of the actual provisioning of facilities-based competition reflects that it is not available throughout MSA-1.
Data Net echoes the AG’s arguments that the provisioning of local residential services through resale has not been an effective marketplace alternative to Illinois Bell’s residential service offerings. Telecommunications carriers relying upon the UNE-P, regulated or unregulated, are similarly not currently able to constrain Illinois Bell’s offerings in the marketplace. Companies relying upon UNE-P facilities under Section 13-801 of the Illinois Act have been constrained in marketing services due to the costs of the market acquisition of new customers juxtaposed to the uncertainty of the future of availability of the UNE-P facilities. Other carriers reluctantly were forced to accept Illinois Bell’s LWC proposal, with rate increases a multiple of the costs for the UNE-P, and at a level higher than SBC retails its residential services.

Facilities-based providers do not even purport to compete in the same price range for basic residential services. As reflected in Illinois Bell’s own testimony, consumers seeking to purchase stand-alone telephone service from Comcast would be charged $54.95 a month. A combination package of Internet and voice services from WOW is $59.99 a month. AT&T Ex. 2.0 (Moore), pp. 8, 18. With Illinois Bell local residential services at between $18 and $27, these offerings by facilities-based carriers do not offer comparable rates, terms and conditions to Illinois Bell’s services.

Data Net argues that after 17 years of authorized local competition, actual market behavior conclusively establishes that there are significantly economic, technological, and other barriers to entry into the mass market local residential services. Numerous and various attempts have actually been made to bring competition to this service market in MSA-1. Given the traditional revenue streams flowing from mass market residential consumers, the high cost of building facilities by competitive carriers has been an ineffective option. The two largest facilities-based providers, Comcast and RCN, despite the benefit of existing video facilities, have shown only very limited offerings of local voice services to consumers. Illinois Bell presented no evidence of record as to these companies’ impact for stand-alone voice services. Instead, the data reflects RCN’s total market input constitutes less than 1% of the residential market. Data Net Systems Ex. 1.0 (Gillan) p.12. Comcast’s market share primarily derives from a failed attempt by AT&T Cable to utilize cable facilities as a means of competing for local residential services. This legacy customer base, inherited as part of the purchase of AT&T Cable video services, has been grandfathered and shows an actual decline in its customer base over the last calendar year. Data Net Systems Ex. 1.0 (Gillan), p.13; Data Net Systems Cross Ex. No. 3A. RCN’s residential lines also have declined over the same period. Data Net Systems Cross Ex. No. 3A.

Data Net asserts that many attempts have been made, but few have succeeded, in creating residential competition to Illinois Bell in MSA-1. Only the UNE-P, provided pursuant to either the Federal Act or Illinois Act, has proven effective in reaching residential consumers with a viable alternative to Illinois Bell’s residential services in MSA-1. At its peak, competitive carriers had 835,984 lines on UNE-P in Illinois Bell’s service territory, primarily to the residential customer base. Since the sea change brought about by the
FCC’s *Order on Remand*, the number of UNE-P lines has dropped 30% in the past year. Compare: Data Net Systems Cross Ex. 2 (835,984 residential and small business UNE-P lines in Illinois Bell’s territory as of December 31, 2004) to Data Net Systems Cross Ex. 1 (584,826 UNE-P lines in Illinois Bell’s territory as of December 31, 2005) (FCC Form 477). During the same time period, the number of lines provided through the competitive carriers’ own facilities (UNE-L) not only failed to acquire these customers (who had already indicated their desire to subscribe to a competitor to Illinois Bell), but their own customer base diminished by 45,804 lines, for a loss of 17% of their own customers. Data Net Systems Cross Ex. Nos. 1 and 2. The inability of facilities-based competitors to take advantage of the significant loss suffered by UNE-P carriers provides further market evidence of the competitive industry’s dependency on use of Illinois Bell’s facilities to effectively compete in the residential market in MSA-1.

Like the AG, Data Net insists that the instant record of the actual market behavior for residential services in MSA-1 provides extensive evidence of the dependency of local residential competition on the use of Illinois Bell’s UNE-P facilities. The ability of competitive carriers to compete with Illinois Bell residential services is seriously undermined by the elimination of the federal obligation to provide these facilities and by Illinois Bell’s efforts to preempt the Illinois Act. The mere threat posed by Illinois Bell’s federal lawsuit has already severely impacted competition in the MSA-1 residential market.

Another important consideration for the ICC is the potential impact reclassifying Illinois Bell residential services may have on the competitive market structure the classification depends. The record reflects that the fundamnet dependence on the availability of the UNE-P for local residential competition. Only Section 13-801 of the Illinois Act preserves the continued availability of those regulated facilities. But this obligation extends only to incumbent local exchange carriers subject to alternative regulation under Section 13-506.1 of the Illinois Act.

Alternative regulation governs only the noncompetitive services of a telecommunications carrier. 220 ILCS 5/13-506.1. Through this authority, Illinois Bell removed its noncompetitive services from rate-of-return regulation to price cap regulation, enabling Illinois Bell to achieve greater profit margins on noncompetitive services. As part of the revamped regulatory scheme of the 2001 rewrite of the Illinois Act, Illinois Bell’s business and vertical services were reclassified competitive. Should Illinois Bell’s residential services be reclassified as competitive, the financial incentive to remain under alternative regulation for any remaining noncompetitive services would lessen considerably, possibly resulting in Illinois Bell’s request to withdraw from alternative regulation.

If local residential competition depends on Illinois Bell’s provisioning of UNE-P facilities, the reclassification of Illinois Bell’s residential service could actually trigger a series of events resulting in Illinois Bell’s withdrawal from alternative regulation and, correspondingly, any obligation under Section 13-801 to make available the UNE-P facilities that supported the reclassification. Therefore, any determination by the ICC that Illinois Bell local residential services are competitive based on the
existence of UNE-P-based competitors at a minimum must note that such competitive classification is contingent upon the continued provisioning of UNE-P facilities to competing carriers under the rates, terms, and conditions of Section 13-801.

F. CUB’s Initial Position

CUB pointed out that there are three requirements for classification of a competitive service. First, AT&T must show that the service has been reclassified only in the appropriate geographic area. Second, AT&T must show that there is another service that serves as a functional equivalent or substitute. Third, AT&T must show that the functional equivalent or substitute service is reasonably available from more than one provider.

CUB’s initial position in this proceeding (prior to the filing of the Joint Proposal) was that the Commission should order AT&T Illinois (“AT&T”) to reclassify its most basic services, Residential Local Usage and Residential Network Access Lines, as non-competitive under Section 13-502 of the Illinois Public Utilities Act (“PUA”). CUB presented testimony that these services are not competitive in MSA 1. According to this testimony, customers in MSA 1 do not have choices for affordable basic residential telephone services because CLECs, wireless providers, cable providers, and VoIP providers do not sell the most basic, unbundled residential services anywhere in MSA 1. In addition, CLECs, wireless, cable, and VoIP providers do not sell functional equivalents or substitutes for these services in MSA 1. CUB therefore recommended that the Commission find that AT&T’s reclassification of Residential Local Usage and the Residential Network Access Line does not meet the standard in Section 13-502 of the PUA, and order AT&T to reclassify these services as noncompetitive.

According to CUB, the 118 exchanges in MSA 1 experience a wide variety of market conditions. Thus, CUB initially advocated that the Commission analyze AT&T’s application by exchange rather than by a larger geographic area. By analyzing each exchange individually, the Commission would avoid classifying some areas within the MSA as competitive when, in fact, they are not. CUB argued that such exchange-based analysis would avoid leaving residents of some exchanges with unregulated prices and without the price discipline of a robustly competitive market.

CUB’s initial testimony in this proceeding also presented the following conclusions: (1) Packages offered by CLECs, Wireless, Cable, and VoIP providers are not, for many customers, substitutes for AT&T’s Residential Local Usage and the Residential Network Access Line because they offer additional features at higher prices; (2) Wireless offerings are not functionally equivalent to AT&T’s Residential Local Usage and the Residential Network Access Line; (3) For most people, wireless offerings complement landline telephone service, but do not substitute for it; (4) Cable offerings are not functionally equivalent to AT&T’s Residential Local Usage and the Residential
Network Access Line; (5) VoIP offerings are not functionally equivalent to AT&T’s Residential Local Usage and the Residential Network Access Line; and (6) CLEC competition is neither robust nor does it occur throughout MSA 1.

As a result of these facts, if AT&T’s Residential Local Usage and the Residential Network Access line are reclassified as competitive without the presence of a functional equivalent and substitute services available, AT&T would be able to raise these rates to the level of the nearest offered package price without the consequences inherent in competitive markets. CUB contended that consumers then would have two choices: either leave the telephone system entirely, going without vital communication services, or pay the higher price. Moreover, CUB pointed out that Section 13-502 of the PUA requires the Commission to consider “any other factors that may affect competition and the public interest that the Commission deems appropriate.” In CUB’s view, the Commission should consider the effect of AT&T’s reclassification on efforts to achieve universal basic telephone service. CUB believes AT&T’s reclassification raises the possibility of higher rates for the most basic services relied upon by low-volume and low-income users to access E-911, schools, childcare, and workplaces. Thus, AT&T’s competitive reclassification is improper for Residential Local Usage and the Residential Network Access Line.

G. Commission Discussion and Analysis

Our discussion and analysis of the competitiveness of the Chicago LATA is combined with our discussion of the Joint Proposal and presented below.

VI. THE ATT-CUB JOINT PROPOSAL

A. AT&T Position

1. The Terms Of The Joint Proposal

The Joint Proposal is spelled out in paragraphs 1 through 10, 17 and 18 of the “Stipulation and Joint Proposal” entered into by AT&T Illinois and CUB (the “Stipulation”). Under the terms of the Joint Proposal, the competitive reclassification of all of the residential services in the Chicago LATA at issue in this case (whether provided on a stand-alone basis or as part of service packages) would be sustained by the Commission. To address concerns that prices for stand-alone network access lines might increase too quickly in a competitive market, AT&T Illinois agreed not to increase stand-alone network access line or Bands A and B local usage rates during 2006. AT&T Illinois further agreed to limit any subsequent increases in network access line rates to no more than $1 per year in each of the years 2007, 2008, and 2009, and any increases in the current $.03 per call charge for
Bands A and B local usage to no more than $.005 (½ cent) per year in those same years.

To address the issues associated with low-use customers, AT&T Illinois agreed to create three “safe harbor” rate packages that will be available to both existing and new customers. The rates for its smallest calling plan (Local Saver Pack 30) and the associated network access line will be capped at their current levels for four years and the rate for calls over the 30-call allowance will be reduced. The rates for AT&T Illinois’ basic unlimited calling plan (Residential Saver Pack Unlimited) and its associated network access line will be reduced by approximately 24% in each Access Area and capped at the reduced rates, for the same four-year period. The rate for the Company’s Flat Rate Package will be reduced by approximately 18% and capped at the reduced rates. The Flat Rate Package allows customers to make unlimited local calls and includes two vertical features of the customer’s choosing. Under the Joint Proposal, these three “safe harbor” packages will be available to any customer within the Chicago LATA, whether or not a customer is currently purchasing them. The four-year rate freeze will apply to both existing and new customers. As part of the Stipulation, AT&T Illinois further agreed to collaborate with CUB to rename the “safe harbor” packages. AT&T will have final decision-making authority over such names, subject to the Company’s standard trademark and legal approval review process. Stipulation and Joint Proposal at para.10 AT&T Illinois will also send customers bill inserts and/or bill messages during each 12-month period following approval of the Joint Proposal, providing them with a description of the regulatory and rate changes approved in this docket and telephone numbers and website addresses where they can obtain additional information from either AT&T Illinois or CUB. AT&T Illinois will collaborate with CUB on the text and design of these bill inserts and messages.

At the end of the four-year period of the rate cap, AT&T Illinois would be able to increase the prices of the “safe harbor” packages. However, if the rates for any of the three packages were increased in any one year by more than 2% plus the change in the landline local telephone component of the Consumer Price Index for the preceding twelve months, then the Commission would initiate an investigation into the justness and reasonableness of the increased prices. AT&T could also discontinue any safe harbor package not mandated by Section 13-518 at the end of the four-year period. Stipulation and Joint Proposal, para. 8

With one exception, the Joint Proposal is contingent upon its acceptance in its entirety by the Commission in a final order in this docket. The exception relates to the “legislative packages” implemented by AT&T Illinois in 2001 to comply with the requirement of Section 13-518 of the Public Utilities Act (the legislative packages include two of the three safe harbor packages: the Residence Service Pack Unlimited and Flat Rate Package). In the event that the Commission determines, as a matter of law, that the legislative packages may not be classified as competitive, AT&T Illinois and CUB agreed to proceed with the Joint Proposal if the Commission approves all of its other terms and conditions that require Commission acceptance.
The Joint Proposal also contains provisions that do not require Commission acceptance. For example, there are additional customer information provisions. AT&T Illinois has agreed that, if the Joint Proposal is approved, it will provide CUB with $2.5 million to fund consumer education and outreach programs over a three-year period. These payments will be used for programs that educate consumers on ways to save money on their phone bills, including promoting the “safe harbor” packages. These payments will be likely used by CUB for paid advertising, direct mail, community outreach, public service announcements, statewide media campaigns and public forums designed to help consumers choose the calling plan that best suits their households’ telecommunications needs.

Finally, AT&T Illinois committed to expand the availability of high speed digital (DSL) Internet service in the Chicago LATA. Specifically, within one year, AT&T will bring high speed digital (DSL) Internet service from 86% to 99% of the wire centers AT&T Illinois operates in the Chicago LATA. In addition, AT&T Illinois will invest in and upgrade its loop plant to expand the availability of DSL to 90% of the total customer living units in the Company’s service territory in the Chicago LATA. AT&T Ex. 1.5 at 41

2. The Benefits Of The Joint Proposal

According to AT&T Illinois, the Joint Proposal is pro-competitive. AT&T Illinois argued that it promotes competition for low use customers by providing AT&T Illinois with the ability to gradually increase local exchange service prices beginning in 2007, as Staff’s testimony generally recommends. Over time, these rate adjustments will correct the current mis-pricing of AT&T Illinois’ residence network access lines and lead to market-based prices. According to AT&T Illinois, these prices, in turn, will provide incentives for CLECs to compete for a wider range of local exchange service customers. AT&T Illinois further argued that its agreement to limit such increases over the next four years is pro-consumer because it minimizes concerns regarding rate continuity. According to AT&T Illinois, the safe harbor packages will provide service options for those customers within the targeted group who cannot afford (or wish to avoid) increases in network access line and usage prices. As a side benefit, AT&T Illinois stated that customers also have the potential to realize savings. Based on an analysis of stand-alone customers who could potentially benefit today by switching to the safe harbor packages, AT&T Illinois estimated potential savings on the order of $8.9 million. AT&T Illinois pointed out that the number of customers who would benefit, and the associated savings, will be greater to the extent that AT&T Illinois increases prices for stand-alone access lines and/or usage within the caps provided for by the Joint Proposal.

AT&T Illinois contended that the Joint Proposal is consistent with current trends in the industry. AT&T Illinois explained that many states have declared local service rates competitive and/or deregulated them. For example, approximately 90% of AT&T Michigan’s residence lines have been deregulated with no regulatory constraints on price increases. The Indiana legislature approved telecommunications legislation that will deregulate AT&T Indiana’s residence exchange services once
its Alt Reg Plan expires on July 1, 2007. After July 1, the Act’s only constraint on AT&T Indiana’s ability to increase network access line rates will be for those customers who purchase no features and do not make any long distance calls. Even for that narrow subset of customers, AT&T Indiana will be able to increase its rates by up to $1.00 per month annually for three years, if it can demonstrate (by exchange) that it offers broadband service to at least 50% of the households. All of these rates become completely deregulated on July 1, 2009. The Ohio Commission has approved rules implementing legislation that allows the reclassification of local exchange services as competitive. Under these rules, Ohio LECs (including AT&T Ohio) will be able to increase competitive residence network access line rates by up to $1.25 annually and basic Caller ID rates by up to $.50 annually. There are no constraints on AT&T Ohio’s ability to change rates for other residence local exchange services. Under a Wisconsin competitive classification order, AT&T Wisconsin has pricing flexibility for 70% of its residential lines. For those customers who purchase stand-alone network access lines, prices can be increased by $2.50 per year for two years. Thereafter, there are no constraints on pricing. Most recently, AT&T Illinois pointed out that the New York Public Service Commission had adopted a plan that allows Verizon New York to increase its stand-alone network access line rates state-wide by $2.00 immediately and $2.00 next year to bring them into better alignment with TELRIC costs; Verizon New York may increase its flat rate prices up to a cap of $23.00 in annual increments of $2.00. Thus, AT&T Illinois argued, the Joint Proposal’s rate caps are modest and reasonable in light of the pricing freedoms being allowed other ILECs today.

AT&T Illinois disputed the Attorney General’s claim that the mere fact of the Joint Proposal demonstrated that the residential exchange services at issue in this case are not competitive. To the contrary, AT&T Illinois argued that all of the its residence services in the Chicago LATA are competitive as a matter of law and fact. AT&T Illinois stated that it had entered into this Joint Proposal with CUB in an effort to address concerns raised by other parties about the competitive alternatives available to certain stand-alone service customers today and that it simply provides additional benefits to consumers that the Commission may consider as “other factors” that affect competition and the public interest pursuant to Section 13-502(c)(5).

AT&T Illinois disputed the Attorney General’s claim that the rate benefits of the Joint Proposal are too limited. AT&T Illinois pointed out that the Joint Proposal is fundamentally not a rate reduction plan. Rather, the purpose of the safe harbor commitments is to provide customers who want price protection with alternatives in the event that stand-alone network access line and usage rates increase. According to AT&T Illinois, further rate reductions designed to generate even more savings for a wider cross-section of customers would be (i) unnecessary, given the competitive services available from alternative providers in the Chicago LATA; and (ii) counterproductive, in that such rate reductions would further inhibit, rather than promote, competition.

Contrary to the Attorney General’s views, AT&T Illinois contended that the potential for increases under the Joint Proposal was not inconsistent with the goals of a competitive
telecommunications policy. According to AT&T Illinois, the purpose of a competitive telecommunications policy is to bring telecommunications prices to competitive market levels. Where the regulatory process has kept prices low, it is entirely predictable that a competitive market could result in higher prices.

AT&T Illinois disputed the Attorney General’s estimates of the potential revenue increase to AT&T Illinois in the event that the Joint Proposal is approved. AT&T Illinois explained that there is no definitive basis on which to perform this calculation, because it depends on whether (and how much) the Company increases rates over the four-year transition period and how many customers take advantage of the safe harbors. According to AT&T Illinois, the Attorney General’s estimate wildly overstated the likely revenue effect by assuming that: (i) AT&T Illinois will increase rates to all customers who purchase packages other than the safe harbor packages (despite intense competition for packages); (ii) pre-merger AT&T will increase rates to all of its CLEC customers (a separate affiliate that has nothing to do with this proceeding); and (iii) not one of AT&T Illinois’ existing 830,000 local measured service customers will take advantage of the safe harbor packages. AT&T Illinois argued that none of these assumptions were realistic. AT&T Illinois noted that Staff had estimated the range of revenue effects to be between $1.6 million to $110 million. AT&T Illinois further pointed out that any revenue increases had to be viewed in the context of the revenues it had lost to competition over the last several years: even a $116 million cumulative increase over the four years of the Joint Proposal (which translates into a $38.7 million annual increase) would represent only 3% of the $1.3 billion reduction in revenues AT&T Illinois has experienced since 2000.

AT&T Illinois further disputed the Attorney General’s claims that AT&T Illinois’ local exchange services were not competitive because consumers have insufficient information to make informed choices. AT&T Illinois pointed out that telecommunications providers are bombarding customers with media and print advertisements for their products and services and all maintain websites from which additional information can be obtained. AT&T Illinois argued that the fact that customers have to comparison shop and make judgments about the value of different offerings or that telephone services may have characteristics about which consumers are in some way uncertain before purchase does not distinguish this market from any other competitive market. In fact, AT&T Illinois contended that choosing telecommunications services is comparatively straightforward and mistakes are easily corrected compared to other products in indisputably competitive markets (e.g., automobiles).

AT&T Illinois argued that the Attorney General’s claim that the Commission, as a matter of law, cannot adopt the Joint Proposal under the BPI case is incorrect.  Business and Professional People for the Public Interest v. Comm. Comm., 136 Ill. 2d 192 (1989) (“BPI”). AT&T Illinois agreed with the Attorney General (and Staff) that, because not all parties have signed on to the Joint Proposal, the Commission must evaluate it on its merits in light of the record evidence. However, contrary to the Attorney General’s assertion, AT&T Illinois contended that BPI said nothing about this Commission’s ability to consider and accept AT&T Illinois’
voluntary commitments in the Joint Proposal as part of its overall decision making under Section 13-502 of the Act. AT&T Illinois pointed out that, in BPI, the Commission was engaging in ratemaking under Article IX of the Public Utilities Act. In that context, the Supreme Court stated that rates in a contested case could not be set using mechanisms that the Commission could not impose on the utility without the utility’s agreement. Id. at 229-230.

According to AT&T Illinois, this proceeding does not involve Article IX ratemaking: the Commission is determining the appropriate classification of services under Section 13-502 and it is establishing no rates in that process. According to AT&T Illinois, it is well-established that the Commission can consider voluntary rate commitments by a carrier in Section 13-502 proceedings and rely on them in its decision to classify a service as competitive, citing to the 1986 proceeding classifying pre-merger AT&T’s long distance services as competitive. In that case, pre-merger AT&T volunteered to maintain statewide average rates and the Commission relied on that commitment in approving the classification. Order in Docket No. 86-0003, adopted April 23, 1986, at 7-8. The Appellate Court noted this requirement in its opinion affirming the Commission’s decision. MCI Telecommunications Corp. v. Ill. Comm. Comm., at 1012. AT&T Illinois argued that the General Assembly had codified the Commission’s authority to accept such voluntary commitments in 2001, when it expressly allowed the Commission to consider public interest factors in deciding competitive classification cases. 220 ILCS 5/13-502(c)(5).

The Company also pointed out that the Commission has routinely relied on a utility’s voluntary acceptance of conditions that it could not otherwise impose in other non-ratemaking contexts. For example, in the original Alternative Regulation Plan proceeding under Section 13-506.1, AT&T Illinois made a voluntary commitment to spend $3 billion on its network over the first five years of the Plan, which the Commission recognized in its overall evaluation of the Plan and imposed reporting requirements on AT&T Illinois to ensure that it was met. Order in Docket Nos. 92-0448/93-0239, adopted October 11, 1994, at 93-94, 191-192. In the SBC/Ameritech Merger proceeding, the Commission relied on a host of commitments by SBC and Ameritech that went far beyond what it could have imposed on the Company under the authority of Section 7-204 of the Act. Order in Docket No. 98-0555, adopted September 23, 1999, at 147, 239, Finding (7) at 262. In the Illinois Section 271 docket, the Commission also accepted and relied on voluntary commitments by AT&T Illinois as part of its determination that the Company’s markets were open to competition in compliance with the federal Act. Order in Docket No. 01-0662, adopted May 13, 2003, at 912-916.

Finally, AT&T Illinois argued that the Attorney General’s solution – i.e., returning AT&T Illinois’ residence services to noncompetitive status and the Alternative Regulation Plan – will do nothing to address the lack of competition for low use customers. Contrary to the Attorney General’s implication, AT&T Illinois noted that this problem will not correct itself over time. AT&T Illinois noted that the Attorney General was absolutely silent on the question of how the continuation of price decreases for local exchange services under the Alternative Regulation Plan will attract competition.
3. **Staff’s Rate Rebalancing Proposal**

AT&T Illinois contended that, in contrast to the Joint Proposal, Staff’s rate rebalancing proposal will not provide an effective remedy for the lack of competition for low use customers. AT&T Illinois stated that there were (at least) three major flaws in Staff’s proposal. First, according to AT&T Illinois, the overall level of revenues produced by AT&T Illinois’ residence services is at least as significant a factor in this market as the distribution of those revenues between products (i.e., between network access lines, usage and central office features). If these services are put back under the Alternative Regulation Plan, AT&T Illinois pointed out that it will have to continue reducing rates for another five years and emphasized that Staff recognized the corrosive effect that these price reductions had already had on competition. According to AT&T Illinois, it makes no sense to make this problem worse while rates are being rebalanced.

Second, even if the overall level of rates did not decline, AT&T Illinois argued that revenue neutral rate rebalancing will not make this market more attractive to competitors. According to AT&T Illinois, Staff’s proposal does nothing more than to move revenue “peas” around under different product “shells.” In other words, if network access line prices are increased $5.00, but usage and feature prices are reduced by the same $5.00, nothing has changed in terms of the overall economics of the marketplace. Although these price changes would theoretically expand the universe of low use customers that would be profitable for CLECs to serve, AT&T Illinois contended that this is a “zero sum” game: that is, for every low use customer that becomes more profitable, a heavier use customer becomes less profitable. In fact, AT&T Illinois argued that this type of restructuring would actually represent a negative outcome for the CLECs, since it would result in reduced AT&T Illinois rates to the higher-margin residence customers that the CLECs currently target.

AT&T Illinois disputed Staff’s view that the fact that AT&T Illinois’ calling and central office feature rates are above cost today, in and of itself, requires rate rebalancing. AT&T Illinois explained that, although prices do equal cost in the classic economic model of perfect competition, that model has little application in the real world and particularly not to the telecommunications industry. AT&T Illinois pointed out that even Dr. Selwyn did not address its current rate structure where calling and feature rates are priced higher than network access line rates relative to cost.

Third, AT&T Illinois argued that Staff’s approach will take longer and will have a potentially less market-consistent outcome than the Joint Proposal, as even Staff recognized. In order to accomplish rate rebalancing, the Commission would have to make major modifications to the Alternative Regulation Plan. There is no dispute that this would require a docketed proceeding, which would be as heavily contested as this docket. Staff estimated that it would take at least a year – perhaps longer – to put a rate rebalancing plan into place. It would then take five to six years to implement the rate changes. Moreover, AT&T Illinois emphasized that the regulatory process would be attempting to determine a market rate and would not likely perform this function as well as the
marketplace.

AT&T Illinois responded to Staff’s contention that Staff’s approach was more conservative. AT&T Illinois contended that that does not make it “better” or ensure a more market-based outcome. Indeed, AT&T Illinois noted, the Joint Proposal, with all of its rate commitments and safe harbors, could hardly be described as “radical.” AT&T Illinois contended that the key policy consideration is that continued heavy-handed regulatory control over AT&T Illinois’ local exchange service prices over another 5-7 year period is not consistent with the General Assembly’s pro-competitive policies. According to AT&T Illinois, when guided by the General Assembly’s clear policy directive in Section 13-103(b) that “competition . . . should be pursued as a substitute for regulation,” the Commission should choose the Joint Proposal’s market approach over Staff’s regulatory approach.

4. Other Public Interest Concerns

AT&T Illinois disputed the Attorney General’s contention that the proposed recategorization is per se contrary to the public interest because it could lead to rate increases for local exchange services. According to AT&T Illinois, rate increases for basic local service are not per se contrary to the public interest and, in fact, would be pro-competitive. AT&T Illinois pointed out that the Joint Proposal contains rate caps that ensure that increases for basic local exchange service will be moderate and will not cause rate shock. Moreover, AT&T Illinois noted, a competitive classification is not equivalent to deregulation. It simply gives AT&T Illinois more pricing flexibility, because it allows both rate increases and rate decreases to become effective immediately. However, the Commission retains “just and reasonable” authority over competitive service rates and can institute investigations into competitive service rate changes by AT&T Illinois and its competitors under Section 9-250 of the Act.

AT&T Illinois disputed the Attorney General’s claim that rate increases will necessarily harm universal service. AT&T Illinois pointed out that its local exchange service prices are very low today and they will continue to be affordable, with or without price changes. AT&T Illinois emphasized that they had fallen 31% relative to the CPI and 35% relative to wage levels, both common measures of affordability, since 2000 alone due to the Alternative Regulation Plan. AT&T Illinois argued that in “real price” terms, residence customers are paying substantially less for residential network access lines today than they were in 1990 and that rate increases on the order of $1.00 a year would still leave the vast majority of AT&T Illinois’ network access line rates under the level of a real price change. AT&T Illinois further contended that its current rates are low compared to those charged by other telephone companies: even a 50% increase would only put them on a par with rates charged by other ILECs in Illinois and the Commission's recently found that a $20.39 rate for
local service would be affordable for small rural ILECs.

AT&T Illinois also disputed the Attorney General’s argument that any rate increases would exacerbate “phonelessness” in Illinois. AT&T Illinois pointed out that the Attorney General was relying on FCC subscribership data that were disputed in the Illinois Lt. Governor’s 2004 “Phonelessness Report.” Moreover, argued AT&T Illinois, if there has been a decline in telephone subscribership in Illinois, it has had nothing to do with its basic local exchange service prices. According to the FCC data, the number of households without wireline or cellular telephones has been going up over the period 1995-2005 at the same time that AT&T Illinois’ basic service rates have been going down.

Finally, AT&T Illinois disputed the Attorney General’s claims that low income (Lifeline) subscribers would be disproportionately harmed by increases in stand-alone network access line rates. AT&T Illinois pointed out that slightly more Lifeline customers subscribe to packages than non-Lifeline customers. Moreover, according to AT&T Illinois, existing Lifeline support mechanisms will largely compensate for any rate increases implemented by the Company, because at most 21% of the Lifeline-eligible customers actually take advantage of the $6.25 monthly discount. Thus, AT&T Illinois argued, the vast majority of these customers could more than offset any rate increases.

B. CUB’s SUPPORT For The ATT-CUB PROPOSAL

1. Proposal is in the Public Interest

CUB argues that the fifth factor of Section 13-502:

(5) any other factors that may affect competition and the public interest that the Commission deems appropriate.

is especially important in this case, because the customer protections contained in the Stipulation have a considerable impact on the public interest. Thus, the Commission must weigh the customer protections provided by the Stipulation when it determines whether these services should be reclassified as competitive.

In addition, the Commission must consider its authority to accept a contested Stipulation. Business and Professional People for the Public Interest v. Illinois Commerce Commission, 136 Ill.2d 192 (1989) (“BPI I”) is the controlling legal authority regarding the Commission’s ability to approve a non-unanimous settlement agreement.
BPI 1 states:

[absent statutory law to the contrary, we have no quarrel with the Commission’s
ability to consider a settlement proposal not agreed to by all of the parties and
the intervenors as a decision on the merits, as long as the provisions of such a
proposal are within the Commission’s power to impose, the provisions do not
violate the Act, and the provisions are independently supported by substantial
evidence in the whole record.” (italics in original).

BPI 1, 136 Ill.2d 192, 217.

CUB argues that nothing in the holding of BPI 1 prevents the Commission from
accepting the Stipulation in this proceeding. PUA Section 13-502 grants the Commission
the power to impose a finding that AT&T Illinois’ competitive reclassifications were proper.
220 ILCS 5/13-502. In addition, the Commission has the power to impose conditions on
competitive rates that are necessary to ensure that those rates are just and reasonable. 220
ILCS 5/13-505(b) states that:

If a hearing is held pursuant to Section 9-250 regarding the reasonableness of an
increase in the rates or charges of a competitive local exchange service, then
the telecommunications carrier providing the service shall have the burden of
proof to establish the justness and reasonableness of the proposed rate or
charge.

Thus, the Commission can, at any time, impose conditions equivalent to the
Stipulation’s provisions that reduce and freeze certain rates and limit other rate increases, if
they are necessary to ensure just and reasonable rates. 220 ILCS 5/13-505(b). If the
Commission determines that the Residential Saver Pack Unlimited and Flat Rate packages
are non-competitive, pursuant to PUA Section 13-518, as discussed further below, then the
Commission may still allow rate decreases for these packages under AT&T Illinois’
alternative regulation plan. Therefore, CUB reasons that the Stipulation fulfills the first
condition of the BPI 1 holding. CUB Reply Br. at 3.

In addition, CUB argues that the Stipulation’s provisions do not violate the Act. The
Commission is required to consider other factors that may influence the public interest, such as this
Stipulation, when determining that AT&T Illinois’ competitive reclassification is proper. 220 ILCS
5/13-502(c)(5). In addition, as mentioned above, the Commission may require customer protection
provisions to ensure just and reasonable rates. 220 ILCS 5/13-505(b). Therefore, CUB contends that
the Stipulation fulfills the second condition of the BPI 1 holding. CUB Reply Br. at 3.

Finally, CUB argues that the record supports the provisions of the Stipulation. The
Stipulation protects customers from potentially dramatic rate increases that could result if the
competitive declaration stands unaltered, without the Stipulation. The Stipulation’s customer
benefits are reviewed in more detail below. In light of these protections, the Commission may find AT&T Illinois’ service to be competitive, consistent with the terms of the Stipulation. Doing so is entirely consistent with the Act. 220 ILCS 5/13-502(c)(5). Therefore, CUB maintains that the Stipulation fulfils all three conditions of the \textit{BPI 1} holding, and may be considered on its merits. CUB Reply Br. at 4.

2. Summary of the Stipulation

CUB initially filed testimony recommending that the Commission reclassify the network access line and measured usage as non-competitive. However, on May 10, 2006, CUB and AT&T Illinois filed a Stipulation and Joint Proposal (“Stipulation”) that includes a number of customer protection measures. In light of the agreement represented by the Stipulation, CUB found that sufficient protections exist under the Stipulation to shield customers from the potentially dramatic rate increases that could have resulted had the competitive declaration stood unaltered. Thus, CUB determined that it could support AT&T’s competitive reclassification in light of the Stipulation. The Stipulation asks the Commission to find that AT&T Illinois’ reclassification is proper.

CUB avers that the Stipulation resolves the issues of contention between CUB and AT&T Illinois in this docket and provides significant benefits for consumers compared to: (1) the current alternative regulation regime and current rates; (2) rates that will likely prevail if measured service remains classified as competitive, without the Stipulation; or (3) rates that will prevail under Staff’s recommended rate rebalancing plan. Under Section 13-502(c)(5), the Commission must consider “any other factors that may affect competition and the public interest that the Commission deems appropriate.” 220 ILCS 5/13-502(c). Thus, the Commission must consider how the Stipulation affects the public interest in determining whether to maintain the current designation of services in MSA 1 as competitive. CUB recommends that the Stipulation be approved because CUB believes that, when it is considered in its entirety, it is in the best interest of Illinois MSA1 customers.

To summarize, AT&T Illinois has committed to the following:

- Limit increases in the access line charge to $1.00 per year for four years. If AT&T Illinois chooses to forego an increase or increase the access line rate by less than $1.00 per year, it may roll the remaining increase into later years.

- Limit increases in the local usage charge to $0.005 (one-half cent) per call per year for four years. If AT&T Illinois chooses to forego an increase or increase the access line rate by less than $0.005 per year, it may roll the remaining increase into later years.

- Lower and freeze rates on three packages, currently named Local Saver 30, Residence
Saver Pack Unlimited, and Flat Rate Package, for four years. These packages will be exempt from any access line or local usage charge increases during that time. Any customer may switch to one of these three packages at any time during the four year agreement and will receive the reduced and frozen rates. In addition, CUB and AT&T Illinois will rename the packages to make it easier for customers to find the package that benefits them the most, based on their personal calling patterns.

- **Local Saver 30** currently gives customers 30 Band A and B calls per month for a flat fee of $0.50 per month. Any calls over 30 calls per month are charged a per-call overage charge of $0.10. The Stipulation reduces the overage charge to $0.06 per call. Customers will receive the current access line rate throughout the four-year period, no matter when they subscribe to the package.

- **Residence Saver Pack Unlimited** gives customers the network access line and unlimited Band A and B calls each month for a flat fee. This package does not offer any additional calling features. Under the Stipulation, the rate for Area A will be reduced from the current rate of $12.05 to $10.00. The rate for Area B will be reduced from $15.03 to $13.00. The rate for Area C will be reduced from $18.50 to $16.00.

- **The Flat Rate Package** gives customers the network access line, unlimited Band A and B calls each month for a flat fee, and a choice of two optional calling features. Under the Stipulation, the rate for Area A will be reduced from the current rate of $19.10 to $16.00. The rate for Area B will be reduced from $22.08 to $19.00. The rate for Area C will be reduced from $23.50 to $21.00.

- Submit to an automatic ICC investigation of rate increases for these three packages that occur after the freeze period where the proposed rate increase exceeds the increase in the consumer price index for local landline telephone charges for the previous year, plus 2 percent.

- Provide seven customer bill messages and inserts, designed in conjunction with CUB, telling customers of opportunities to reduce their telephone bills.

- Provide a $2.5 million customer education fund that will be used to notify customers of opportunities to reduce their bills.

  - The consumer education campaign that will result is intended to help customers prepare themselves for any potential rate increases. In addition, it is intended to
compel some customers to move from expensive packages to less expensive packages that offer the same or similar service.

o CUB commits to administer the fund through a separate Illinois 501(c)(3) organization. CUB envisions that a majority of the funds will be used for paid advertising and direct mail. In addition, other activities sponsored by the fund may include community outreach, public service announcements, statewide media campaigns, and public forums designed to help consumers choose the calling plan that best suits their household’s needs. CUB also commits to use its website to educate consumers on their telecommunications options.

o As an Illinois 501(c)(3), the fund’s financial records will be open for public inspection. In addition, the fund will prepare an annual report of its operations, including an audited financial statement, that will be filed with the Illinois Commerce Commission (ICC) and be available to the public.

• Significantly increase the availability of DSL in MSA 1.

o AT&T Illinois will install high-speed Digital Subscriber Line (DSL) Internet service to 99% of the wire centers it operates in the Chicago LATA within one year. In addition, AT&T Illinois will make DSL available to 90% of the total customer living units in its territory within MSA 1.

See Stipulation and Joint Proposal.

In addition to the commitments above, CUB and AT&T Illinois have agreed not to take any legal, regulatory, legislative, or other action that would undermine the terms of this agreement. In the event that the Commission determines it does not have the authority to declare the Flat Rate Package and Residential Saver Pack Unlimited competitive, CUB and AT&T Illinois agree to proceed with the agreement, with these packages designated as non-competitive, if the rates for these packages are set at the level agreed to in the Stipulation. CUB adds that, after the end of the rate freeze, any party may seek revisions to the declaration of competitiveness or the trigger provision. In return, the Stipulation grants AT&T Illinois a declaration of competitiveness for all the packages and services in its filing.

3. The Stipulation’s Effect on a Competitive Declaration

In Initial Testimony, CUB’s witness, Ms. McKibbin, presented the broad conclusion that customers do not have competitive choices for affordable basic residential telephone access and usage in the communications marketplace has not changed. CUB Ex. 1.0. Ms. McKibbin cited many reasons to support this conclusion, including the wide variations in the availability of service alternatives across MSA1 and the functional equivalence of
technologies like Voice over Internet Protocol (“VOIP”). CUB Ex. 1.0 at 2. However, CUB believes that the Stipulation addresses these concerns by making affordable services available to customers who CUB worries may lack competitive alternatives.

Ms. McKibbin testified as to the appropriate competitive designation for stand-alone access and usage services in MSA 1, and expressed concerns primarily about customers who make relatively few calls and subscribe to few optional services. CUB Ex. 1.0 at 13. CUB maintains that these customers will benefit the most from the Stipulation’s customer protection provisions. However, according to CUB, the Stipulation also provides benefits for customers who choose several optional features and make a higher volume of calls. Further, in addition to providing safe harbors and limiting rate increases on access and usage, CUB believes that the customer education fund provided for in the Stipulation will allow it to assist all customers in MSA 1 in selecting the lowest cost and most appropriate telecommunications services for their needs.

CUB asserts that the Stipulation provides protections for three “safe harbor” packages, Local Saver 30, Residential Saver Pack Unlimited, and the Flat Rate Package by reducing and freezing the prices for these packages, and also provides limits on rate increases for access and usage. Thus, CUB believes that the Stipulation will protect consumers while the market for telecommunications services continues to develop. In addition, CUB argues that the trigger mechanism contained in the Stipulation will provide additional assurances beyond the four-year period of the agreement, ensuring that customers on the safe harbor packages will not be abandoned or suffer significant price increases without Commission approval, although AT&T could discontinue any safe harbor package not mandated by Section 13-518 at the end of the four-year period upon 45 days notice. Stipulation and Joint Proposal, para. 8.

4. The Role of Customer Education in the Stipulation

CUB feels strongly that a wide range of customers will derive significant benefits from the Stipulation. CUB has extensive customer experience through its consumer services department’s assistance to customers, community meetings, phone bill clinics, and other direct customer contact. According to CUB, this experience suggests that many telephone customers use services that provide more functions, at a higher price, than they need or want. CUB claims it has had much success in educating consumers to change their purchasing practices to reflect more accurate usage patterns as well as real cost savings. As stated by CUB witness, Ms. McKibbin, “CUB, as a consumer advocate is in the unique position of marketing ways to save customers money – without selling them anything. CUB has 22 years of experience in getting practical, clear information to Illinois utility customers.” CUB Ex. 6.0 at 7. CUB has observed problems with the availability and consistency of consumer information in the telecommunications industry for years, which it believes are demonstrated by Ms. Zolot’s testimony on behalf of the Illinois Attorney General. CUB avers that the consumer education fund will be used to address issues like those raised by Ms. Zolot, in addition to communicating the direct benefits of the Stipulation, by getting more and
better information to consumers to assist them in selecting the most appropriate services for their telecommunications needs.

In this vein, CUB argues that the Stipulation, even before the rate reductions are taken into account, will benefit all of the MSA 1 customers who currently subscribe to the Economy Solution package who change to the Flat Rate Package, because it offers the exact same service, but at lower rates. CUB Ex. 5.0, Line 369-74. When the rate reduction is taken into account, the savings only multiply. CUB believes that, with comprehensive customer education, this agreement will benefit many of these customers, as well as current measured use customers.

CUB acknowledges that, to attain the exact maximum potential benefit from the Stipulation, some customers must change services, and that this change in customer behavior does indeed depend on customers’ knowledge of alternative service options. CUB Ex. 5.0 at 9. However, CUB argues that the Stipulation includes a sizeable customer education fund to help achieve that goal, as described above. CUB believes that the $2.5 million included in the fund is significant when compared to the $6.8 million AT&T Illinois spent in 2005 “to promote all of its retail products, both residence and business and on a state-wide basis.” AT&T IL Ex. 1.5 at 28. CUB is confident that it can craft a marketing strategy that will get specific information to Illinois customers in a form that they will use to save money. Id. at 11.

CUB explains that, as a consumer watchdog organization, it has had considerable success in relaying its consumer-friendly messages to consumers and effectuating action from consumers on various issues. CUB already uses direct mail, direct consumer contact and its website to contact consumers and relate its messages, and it does this on a very small budget. CUB believes that the $2.5 million in the customer education fund will go a long way to communicating the benefits of the Stipulation to consumers in MSA 1. CUB will administer the fund through a separate Illinois 501(c)(3) organization and the fund’s financial records will be open for public inspection. In addition, the Stipulation specifies that the fund will prepare an annual report of its operations, including an audited financial statement, that will be filed with the Illinois Commerce Commission (ICC) and be available to the public.

5. Benefits of the Stipulation as Compared to Various Alternatives

CUB argues that the Stipulation provides advantages over current rates under alternative regulation. By lowering and freezing the price of the three safe harbor packages, and providing for customer education to encourage customers to switch to appropriate packages for their needs, CUB has determined that the Stipulation can save customers up to
$23.5 million per year over current rates: current package customers will save a total of $235,000 per year (CUB Ex. 5.0 at 8); measured use customers can save up to $7.4 million per year over current rates by moving to safe harbor packages (CUB Ex. 5.0 at 9); and current subscribers to other packages can save up to $15.9 million per year over current rates by moving to safe harbor packages that offer the same or similar service at lower rates (CUB Ex 5.0 at 5).

CUB notes that, while alternative regulation can result in lower rates, rate decreases are not guaranteed, especially in an environment of increasing inflation. CUB Ex. 6.0 at 5. If inflation rises above 4.3%, measured service rates could actually increase under AT&T Illinois’ alternative regulation plan. Id. CUB points out Staff witness Mr. Zolnierek’s statement that, even though “measured service customers that switch to a fixed rate calling plan could potentially lose a productivity adjustment over the next four years that would otherwise lower their existing rates, …the Joint Proposal will prevent AT&T Illinois from increasing residence local service rates to match inflation.” Staff Ex. 9.0 at 14. In addition, CUB notes that AT&T Illinois routinely applies a portion of the rate decreases required by alternative regulation to grandfathered services, making it impossible for customers who do not currently subscribe to those services to benefit from the reductions.[7]  CUB Ex. 5.0 at 5-6.

CUB opines that the Stipulation also provides significant advantages over rates that may prevail if measured service remains classified as competitive, without any customer protections. CUB further points out that if the Commission approves the Stipulation, AT&T Illinois’ current reclassification of nearly all services in MSA1 as competitive would allow AT&T Illinois pricing flexibility and it could, therefore, increase prices of all services not subject to the Stipulation. While CUB does not support rate increases resulting from the competitive reclassification, it argues that the Stipulation’s safe harbor packages and limits on increases for a la carte access and usage provide a safety net for many customers that would not have existed but for the Stipulation, if AT&T Illinois’ position were adopted by the Commission.

In reviewing the Stipulation, CUB believes that the Commission should also consider that the customers most in need of protection, customers with the fewest options in the competitive telecommunications marketplace, are precisely the customers targeted by the safe harbor packages, the prices of which will decrease from current levels and remain frozen for the four-year term of the Stipulation. For example, CUB notes that Local Saver 30 protects measured service customers who make few calls and do not want optional calling features. Residential Saver Pack Unlimited protects measured service and package customers who make many local calls and do not want optional calling features. The Flat Rate Package protects measured service and package customers who make many calls or want a larger number of optional calling features. Additionally, to protect individuals who make very few calls, do not want any bells and whistles and only desire the most basic
services, CUB submits that the Stipulation provides for only limited rate increases on the network access line and usage. CUB believes that these provisions provide significant value to customer in MSA1 that cannot be ignored.

Lastly, CUB asserts that the Stipulation provides advantages over Staff’s proposed rate rebalancing. Staff continues to support its original recommendation that the Commission reclassify measure service as non-competitive, but also take steps to revise the alternative regulation plan to bring the measured service rates better in line with costs, in order to satisfy Staff’s concerns about imputation. Staff Ex. 9.0 at 25. However, Dr. Zolnerierek himself has noted that the Stipulation could obtain the advantages of Staff’s proposal, but faster (“the Joint Proposal offers a reasonable alternative that likely favors speed over precision when resolving imputation concerns”). Id. at 26.

6. Benefits of the Stipulation as Compared to Surrounding States

In its consideration of the settlement, CUB argues that the Commission should not ignore the fact that other states have already declared their markets competitive with virtually none of the consumer protections provided in this settlement. CUB notes that Illinois is, in fact, the last Midwestern state served by AT&T Illinois where competitive reclassification proceedings have resulted in almost total deregulation of telecommunications services. The Stipulation provides protections far and above that provided in surrounding states where AT&T Illinois’ competitive reclassifications were successful -- no other midwestern state has approved a limit on usage charge increases as part of a competitive reclassification. While several surrounding states have limited access line increases, none are as strictly limited as this agreement. CUB observes that, consequently, access line rates have risen by up to $2.50 in the first year after reclassification in states with limits. CUB notes that the Attorney General witness, Mr. Selwyn, admits that in Wisconsin, Michigan, Missouri, Oklahoma and Indiana, AT&T ILECs were allowed a minimum of $1.00 increases in access rates. AG Ex. 1.2 at 26. The Stipulation also includes a significant customer education component, and other important consumer protection mechanisms outlined above. CUB points out that it is significant that no other midwestern state has implemented such a comprehensive set of consumer protections for a competitive reclassification. CUB Ex. 5.0 at 19.

In response the AG pointed out that, unlike Illinois where CLECs serve 16.4% of residential lines, in Michigan and Wisconsin the PUCs found a high level of CLEC activity, with a 36% and a 26.4% CLEC market share, respectively, that was growing in each state. Ohio and Kansas imposed significant limitations on SBC’s pricing freedom, with Ohio requiring that several market screens be met for price deregulation. The AG pointed out considerable variation among Midwestern PUCs and Midwestern statutes, and ultimately argued that this Commission must apply section 13-502 irrespective of the laws of other states and actions of other PUCs.

7. Non-Rate Benefits
In addition, CUB explains that the Stipulation gives non-rate benefits. Though CUB and AT&T Illinois do not request approval of this provision of the Stipulation, AT&T Illinois has committed to expand DSL service benefits consumers by providing more options for high-speed Internet service. AT&T Illinois is committing to expand the number of wire centers with DSL to 99% of wire centers operated by AT&T Illinois within one year of the Effective Date of the Stipulation and Joint Proposal. See Stipulation and Joint Proposal at ¶5. Further, AT&T Illinois has committed to invest in and upgrade its loop plant in order to expand DSL availability to 90% of the total customer living units in the Company’s service territory in the Chicago LATA. Id. Customers with broadband service like DSL have the option of selecting VOIP as a telecommunications service. While CUB does not view VOIP as a substitute for landline telephone service, it believes that expanded broadband service will give customers this option for their telecommunications needs if they choose it.

Further, CUB argues that the trigger provision that applies to the frozen packages in the Stipulation is intended to prevent rate shock at the end of the rate-freeze period. CUB Ex. 5.0 at 14. Under the trigger mechanism, if the rate for any of the three packages discussed above increases by the consumer price index for local landline telephone charges fro the previous year, plus 2 percent, the Commission must investigate the justness and reasonableness of that package’s price. Id. For example, if the trigger had been in place in January 2006, rate increases of 4.69% or higher would have triggered Commission review. Id. Additionally, the Stipulation specifies that at the end of the rate freeze, any party may seek revisions to the declaration of competitiveness or the trigger provision. Id.

C. Attorney General’s Position on the Joint Proposal

In response to the “Joint Proposal,” the AG, along with the City of Chicago, the Cook County State’s Attorney’s Office and the American Association of Retired Persons filed the Supplemental Testimony of Dr. Selwyn. He quantified the effect of the deal, and showed that the revenue increases in the access and usage charges authorized by the Joint Proposal equal $12.9 million per year, or $116 million over the term of the proposal. Because a competitive classification for all ATT IL residential services in MSA 1 would allow ATT IL to increase prices for any service, including packages, the total annual increase resulting from the Joint Proposal could be expected to be $30.6 million per year, or $275.4 million over the life of the Proposal. This estimate is based on ATT IL raising the prices for its package services by $1.00 along with the network access line increase, and is consistent with ATT IL witness Mr. Wardin’s estimate of a $30 million annual revenue increase.

In response to CUB and ATT IL’s claim that if CUB is given $2.5 million over the four years of the proposal, it will be able to inform consumers that they can switch their service to
lower rates and save $23,454,000, Dr. Selwyn testified that even if this exceedingly optimistic assumption holds true, consumers as a whole would still be worse off under the Joint Proposal than they would be without it, as the increased revenues to the Company exceed the potential decreases to consumers.

The AG maintains that Dr. Selwyn’s analysis shows that the Joint Proposal should be rejected. Its benefits are either non-existent or speculative. The $2.5 million ATT IL would give to CUB to conduct customer education pales into insignificance against ATT IL’s $120 million annual sales budget, which pays for face-to-face sales contacts.

The AG also noted that the Joint Proposal would declare measured service competitive despite CUB’s agreement that there are no alternatives for measured rate customers. The Commission should not allow a service to be classified as competitive when the evidence is unequivocal that there are no alternatives for that service. Based on the terms of the Joint Proposal, the AG recommends that the Commission reject it.

The AG also pointed out that as a proposal of fewer than all the parties, the Commission must review the Joint Proposal under Business and Professional People for the Public Interest v. Illinois Commerce Commission, 136 Ill.2d 192 (1989) (“BPI I”), where the Court set out the standards for Commission review of a proposal that is supported by fewer than all the parties to a case. The Court said:

Absent statutory law to the contrary, we have no quarrel with the Commission’s ability to consider a settlement proposal not agreed to by all of the parties and the intervenors as a decision on the merits, as long as the provisions of such a proposal are within the Commission’s power to impose, the provisions do not violate the Act, and the provisions are independently supported by substantial evidence in the whole record. 136 Ill.2d at 217.

Under this standard, the Joint Proposal fails.

The AG argues that several of the provisions of the Joint Proposal are beyond the authority of the Commission, and therefore can only be approved upon the agreement of all of the parties. For example, the Joint Proposal contains a rate moratorium that limits ATT IL’s right to change its rates, notwithstanding that the PUA does not authorize the Commission to impose this condition. The Court in BPI I, held that the Commission lacks jurisdiction to impose rate increase limitations, and cannot enter an order to that effect.
without the agreement of all parties. Id.

Another problem with the Joint Proposal was also present in BPI I. There, the Court noted that one party to the agreement, "made its decision backwards: it chose a rate increase and then relied on the evidence which substantiated the rate it decided upon." 136 Ill.2d at 233. In reversing the order, the Court said: "Staff arbitrarily selected the midpoint of the rate range and made arbitrary assumptions on the success of the various positions of the parties and the intervenors. Such considerations clearly are not findings based on the record." 136 Ill.2d at 234. The AG points out that in support of the Joint Proposal, Ms. McKibbin referred to the "risk" of an adverse Commission decision, and argued that the "Joint Proposal is an excellent compromise." The AG maintains that, essentially, CUB and ATT IL "made arbitrary assumptions on the success of the various positions of the parties and the intervenors." As in BPI I, such considerations are clearly not findings based on the record and cannot be lawfully considered by the Commission.

BPI I arose in the context of a rate case, with a test year and special rate base issues arising from the addition of three costly nuclear power plants. By contrast, this case arose as a Commission investigation under section 13-502. No tariff filing or rate change precipitated this investigation and section 13-502 does not involve ratemaking. Nevertheless, the Joint Proposal would change several rates, over several years without the benefit of any tariff filings or other review. The Commission does not have the authority to approve the rate changes in the Joint Proposal in the context of this case and in the absence of tariff filings.

The AG also recommends that the Joint Proposal be rejected because it is an attempt to impose price regulation by an agreement between two parties. CUB witness Ms. McKibbin has suggested that the rate changes in the Joint Proposal "in effect...replace alternative regulation with another form of price regulation." CUB Ex. 6.0 at 5. To the extent that the Joint Proposal is "another form of price regulation," it must be reviewed under section 13-506.1 of the Act, which governs alternative regulation plans. It is inappropriate for two parties, one of which is a regulated entity with more than 80% of the residential market in MSA 1, to purport to unilaterally replace the terms of the alternative regulation plan under the guise of an agreement. Section 13-506.1 authorizes the Commission to rescind an alternative regulation plan, but only after "notice and hearing, [if] it finds that the conditions set forth in subsection (b) of this Section can no longer be satisfied." 220 ILCS 5/13-506.1. None of these conditions were met, and the Commission lacks jurisdiction and authority to adopt the price changes and limitations contained in the Joint Proposal in the absence of the agreement of all parties.
The AG also finds fault with the Joint Proposal's treatment of the three packages that the General Assembly directed ATT IL to offer as non-competitive. The Commission is a creature of the Public Utilities Act, and its actions are limited by the terms of that Act. Section 13-518(d) unequivocally says: "The service packages described in this Section shall be defined as noncompetitive services." 220 ILCS 5/13-518(d). The provisions in the Joint Proposal that would classify these services as competitive violate section 13-518 and are not within the Commission's authority.

The Joint Proposal also requires IBT to provide CUB with $2.5 million dollars. Again, this is a requirement that is not authorized by the PUA, and it is beyond the Commission’s authority to order it.

The AG asserts that the Joint Proposal contains numerous provisions that are beyond the Commission’s authority to impose. As the Joint Proposal "is contingent upon its approval in its entirety by the Illinois Commerce Commission," the entire proposal must be rejected as a matter of law.

The AG also maintains that the Joint Proposal is not supported by the evidence in the record, so notwithstanding the lack of legal authority to approve it, the Joint Proposal lacks factual support. At its most basic level, the Joint Proposal would have the Commission accept the competitive classification of all residential services in MSA 1. This basic provision, however, not only violates section 13-518, but is contradicted by “substantial evidence in the entire record." BPI I, 136 Ill.2d at 240. Even CUB witness Ms. McKibbin admitted that there are no alternative competitive services for measured service customers. She conceded that the Joint Proposal would only benefit consumers if the Commission were to reject her [and CUB’s] belief that there are no competitive alternatives for measured service customers. Id. As the Court in BPI I said: "Arbitrary assumptions on the success of the various positions ... are clearly not findings based on the record." 136 Ill.2d at 234. The fear of Commission rejection of the overwhelming evidence on this issue is not a solid basis for recommending adoption of the Joint Proposal. The AG also stresses that the terms of the Joint Proposal confirm the evidence that measured service and packages of services like the Safe Harbor packages, are not competitive. In response to Mr. Wardin’s “offer” in Rebuttal Testimony to increase the network access line by $1.00 per year for three years, Dr. Staranczak pointed out that “AT&T Illinois’ offer to limit rate increases to between 30% and 100% makes it abundantly clear that there is no competition for measured services.” In reference to the "safe harbor" rate freezes and the caps on increases, Dr. Selwyn asked:

"Why is such 'protection' necessary at all if, in fact, the MSA-1 residence market is competitive as IBT contends? If these services, or their functional equivalent, or a substitute
service, are reasonably available from more than one provider at comparable rates, terms, and conditions, then one would expect -- as did the Illinois legislature -- that the ability of consumers to go elsewhere for their local telephone service would operate to constrain IBT’s ability to increase prices. In short, this proposed ‘settlement’ would not be necessary if the statutory requirements for reclassification have been met.”

The public interest requires that a competitive classification be approved only when, "consistent with the protection of consumers," competition can substitute for regulation. See 220 ILCS 5/13-103(b). The Joint Proposal merely confirms that there is not sufficient competition today, and that there is not expected to be sufficient competition over the next several years, to justify foregoing regulatory safeguards. The evidence does not support finding all residential services in MSA 1 competitive based on CUB and IBT’s stipulation.

A key part of the Joint Proposal is customer education. The payment of $2.5 million to CUB over four years and certain bill insert and message terms are necessary because, as Ms. McKibbin testified, "[t]he largest benefits of this agreement depend on providing customers with the information necessary for them to switch to packages that provide the same or similar service at lower rates.” CUB Ex. 5.0 at 14. She added that customers often do not have easy access to the information necessary to pick the optimal telephone rate. Id. at 17.

There is little doubt that customers lack the necessary information to fully understand their options either among IBT products or from other carriers. Dr. Selwyn showed the number of screens a visitor to AT&T’s web site would have to navigate to get to the Local Saver Pack 30 rate. The rates for the three "safe harbor" packages are incomplete (no access charge is listed) and unlike all other packages, the customer has to "call to order" two of the three packages, meaning that the consumer must discuss his or her service choice with a customer service representative. Further, the measured rate is not shown at all on the "Basic Phone Service" page, requiring a consumer to continue his or her web search to find measured rates and stand-alone prices.

The AG offered the testimony of Julie Zolot, an ATT IL residential consumer in MSA 1, describing her experience in attempting to obtain information from IBT’s customer service representatives to show the extent of the customer information deficit. When she asked customer service for the "cheapest rate" because she wanted to "save money", the representatives did not inform her of her options or whether her calling pattern justified unlimited local calling or unlimited long distance.

Ms. Zolot’s testimony confirms CUB’s position that consumers lack the information necessary to make economic choices. Further, however, it showed that having the necessary information is just one step. A consumer who must contact ATT IL’s customer service to change service may be subjected to repeated sales pitches, misinformation, and resistance to changes that will reduce their bill. Indeed, on two occasions, Ms. Zolot was
referred to a customer care “specialist” when she asked about low, measured service rates. Both times the customer care “specialist” asserted that she was on the best plan for her despite her insistence to the contrary. The AG maintains that unless CUB intends to individually assist each and every person calling ATT IL to order service, it is unlikely that CUB’s $1 million program will overcome IBT’s $121 million face-to-face sales force.

It is the AG’s position that the fact that consumers lack easy access to information necessary to make informed comparisons and choices provides further evidence as to the fundamental absence of competition for MSA-1 residential services. IBT’s agreement to give CUB $2.5 million over four years for customer education, and the fact that consumers will only benefit if they learn about rate changes from CUB, contradict the condition in the Joint Proposal that residential local service in MSA 1 is competitive. The AG also insists that despite the price increase caps, rate reductions and rate freezes, the Joint Proposal is not good for consumers. In return for giving IBT total pricing freedom over the services offered to 2/3 of its MSA 1 residential customers and for sanctioning price increases for the other third, the Joint Proposal reduces the rates that hardly any customers take. Only by learning about these rates, calling to subscribe or navigating the web site, and maintaining consistent calling patterns can consumers benefit. Yet, even if all consumers had perfect information, the rate increases anticipated to result from the Joint Proposal exceed the savings ($30 million per year vs. $23 million per year).

The claimed $23 million savings, the AG points out, is not an annual savings. Ms. McKibbin admitted that this savings would be incrementally obtained, as consumers learn about the “safe harbor” rates and take action to switch their service. Further, the pace at which CUB can reach consumers is unknown. If it relies on “phone clinics” which Ms. McKibbin described on cross-examination on June 5, 2006, CUB will reach less than 50 people per clinic. CUB does not currently have a plan for spending the customer education money, so it is impossible to assess their efficacy, and whether they can be expected to reach the number of customers necessary to obtain the $23 million savings Ms. McKibbin identified.

The AG emphasizes that under alternative regulation, residential consumers have experienced yearly decreases to reflect low inflation and the effect of industry-wide productivity. As Dr. Staranczak pointed out, the alternative regulation plan “is designed to imitate pricing in a competitive market.” If the pricing protections of alternative regulation are lost before there are sufficient and viable competitive alternatives, consumers will both face price increases and lose the price decreases that the alternative regulation plan captures.

D. Staff’s Position on the Joint Proposal

Staff believes the Joint Proposal is lawful and acceptable under the controlling law regarding this contested settlement.
In *BPI 1* the Court stated:
Absent statutory law to the contrary, we have no quarrel with the Commission’s ability to consider a settlement proposal not agreed to by all of the parties and the intervenors as a decision on the merits, as long as the provisions of such a proposal are within the Commission’s power to impose, the provisions do not violate the Act, and the provisions are independently supported by substantial evidence in the whole record. Such was not the situation in the case at bar.

Staff argues, contrary to the assertions of the AG and CCAO, the Commission has the legal authority to accept the Stipulation and Joint Proposal on the merits. In accordance with *BPI 1*, as well as meeting the statutory requirements under Section 13-502, Staff contends that the Joint Proposal was an acceptable alternative to its rebalancing plan. 220 ILCS 5/13-502. The Joint Proposal provided substantial benefits for customers. Under Section 13-502(c)(5) of the PUA, Staff believes the Commission must consider, “any other factors that may affect competition and the public interest that the Commission deems appropriate.” 220 ILCS 5/13-502(c). Staff recommends the Commission decide in favor of the rebalancing plan, but notes that the Joint Proposal is worthy of consideration.

However, in Staff’s opinion, the Joint Proposal was primarily deficient in two areas: 1) it does not pass the imputation test as required under 13-505.1; and 2) measured service has not been proven to be competitive in MSA 1.

**E. CCSAO Position On The Joint Proposal**

The CCSAO contends that the Commission should reject the AT&T Illinois and CUB joint proposal. The CCSAO had no objection to the rate decreases in the joint proposal. Further, to the extent that AT&T Illinois wants to voluntarily fund a consumer education fund – the CCSAO had no objection. The CCSAO objected to how the joint proposal treats the competitive reclassifications. The CCSAO contends that the reclassifications should be reversed and therefore the joint proposal should be rejected.

The CCSAO argued that since there is not unanimous support of all the parties in the case for the joint proposal, then the Commission needs to comply and proceed based on record evidence consistent with Business and Professional People for the Public Interest et al. See *BPI 1* where the Illinois Supreme Court has stated that unanimous support is required for settlements. If not, then the Commission must make an independent finding supported by the record as a whole that the proposal is supported by substantial evidence.

Turning to the record at a whole, the CCSAO contends that the Commission should reject the joint proposal. Only AT&T Illinois and CUB were parties to the joint proposal and they both filed testimony in support of the proposal. While CUB provided testimony supporting the joint proposal, their original testimony in the case still remains in the record.
Dr. Selwyn testified in opposition to the joint proposal on behalf of the Illinois Attorney General’s Office, the CCSAO, the City of Chicago and AARP. AG Ex 1.2 (Selwyn). The CCSAO in its brief pointed to the testimony of Dr. Selwyn who testified that the settlement as presented is not in the public interest. AG Exhibit 1.2 (Selwyn) at 2, lines 13-23. Dr. Selwyn also testified:

The testimony and other evidence offered in support of the settlement compels the conclusion that meaningful and independent competition – i.e., competition that is not wholly or substantially dependent upon IBT wholesale services – simply does not exist at this time, and that reclassification of residential services in MSA-1 to the “competitive” category is premature and certainly not in the public interest. AG Ex. 1.2 (Selwyn) at 46, lines 6-10.

The CCSAO noted that ultimately a review of the record leads ones to the conclusion that the joint proposal should be rejected.

F. Commission Discussion and Analysis

Preliminary Issue

The Commission is of the opinion that for purposes of this proceeding the data available as of the last quarter of 2005 should be controlling because it is the most recent reliable data that has been fully analyzed by all parties. The Commission cannot base its decisions on piecemeal updates provided on an ad hoc basis during the course of a proceeding. In the complex and ever changing telecommunications environment, due process requires that analysis and argument be grounded in data which all parties have all had ample opportunity to consider. We also note our opinion that the Commission should not attempt to draw inferences or conclusions from comparisons of different sets of data drawn from differing sources, as advocated by some parties to this proceeding. These different sets of data are not directly comparable; therefore, attempts to draw inferences or conclusions in this manner are methodologically unsound.

Competition for Package Service

Package telephone service typically entails a single price for unlimited local exchange calling and additional features such as call waiting and caller ID. AT&T’s competitors for package services in MSA-1 generally fall within three groups: (1) competitive local exchange carriers (“CLECs”) (including cable companies providing traditional circuit-switched telephony); (2) wireless carriers; and (3) Voice over Internet Protocol (“VoIP”) providers. The parties have divergent views on the state of competition in this market and on the substitutability of alternatives to wireline service. Data show that as of December 31, 2005, wireline competitive carriers served 502,454 residential access lines in the Chicago LATA, equal to approximately 16.4% of the total number of residential wireline access lines.
AT&T Illinois claimed that CLEC, wireless and VoIP providers actively promote their services as alternatives to AT&T Illinois’ services through various marketing programs, including direct mail, outbound telemarketing, TV and radio, billboards and newspaper advertisements. AT&T asserts that competitive service providers continue to successfully compete throughout MSA-1. In support of this assertion, AT&T Illinois presented evidence showing that at the time the residential services at issue were classified as competitive, CLECs and wireless carriers alone served approximately 24% of the residence lines in AT&T Illinois’ service territory in the Chicago LATA. This percentage does not take into account customers who obtain service from the numerous non-CLEC VoIP providers.

AT&T Illinois also presented evidence suggesting that its residential wireline service has been significantly impacted by the competition described above. Since January 2001, the overall number of residential lines served by AT&T Illinois has dropped by approximately 1.4 million, a 32% decrease. In the Chicago LATA, for the period from December 2000 through March 2006, the total number of AT&T Illinois’ residential lines decreased by 1,007,661, or about 30%. A substantial number of these lost access lines were primary residential access lines.

AT&T contends that, on a Chicago LATA basis, as many as 24% of individual wireless customers have replaced their wireline service with wireless only service and that as many as 9% of households have switched to wireless only. The AG estimate of wireless only households is 6%. The AG argues that for the vast majority of people, wireless service is a complement rather than a substitute for wireline. The AG also points out that wireless service quality is not on a par with wireline and that wireless service is generally more expensive than wireline prices for the services at issue in this case.

AT&T notes that VoIP is another new and rapidly expanding mode of telephone service which it believes may provide service up to 4% of customers. Those opposing AT&T’s view that VoIP is a viable substitute for many or most of the services at issue in this proceeding point out that VoIP requires a broadband (i.e., high speed) internet connection in order to utilize VoIP service. Many customers do not have such a connection and acquiring one solely for telephone service is far more expensive than comparable wireline service. AT&T responds that over 1.5 million customers have an existing internet connection, contending that for these customers VoIP service can be had for a relatively small additional charge.

The AG and Data Net argue at length, based in part upon the data collected by Staff from CLECs, that CLEC wireline competition is in decline. Staff, however, rejects this analysis, arguing that it improperly mixes and matches data points from different sources on different dates. Data points from different, unmatched sources cannot reliably and validly be used to demonstrate a trend. Staff also points out that data from a single time period (12/31/05) by itself cannot be used to determine a trend. Staff believes that the AG and Data Net trend argument suffers from the further shortcoming that it derives form the time period when pre-merger AT&T was acquired by SBC. This occurrence resulted in a large one time increase
in the number of now AT&T controlled former CLEC lines. In other words, these numbers may be more of a blip than a trend indicator.

The AG and Data Net observe that the cost structure for AT&T’s LWC platform is controlled by AT&T. Therefore, they argue CLECs (many of which rely upon the LWC platform) cannot restrain AT&T’s prices for residential offerings because a CLEC’s LWC-based cost structure leaves insufficient margin when compared to prices at which AT&T can offer its comparable retail residential service. As we find below, although this assessment is correct to some extent, it overlooks the effect of bundling local service with long distance to create competitive offerings.

The AG and Data Net vigorously assert that the various platforms available to CLECs do not allow them to compete in the low and even mid range priced package environment. They note that because of FCC decisions, use of UNE-P is in decline and its existence is threatened. They further contend that cable based telephone service providers serve far less than the entire MSA-1 geographic area. Moreover, they assert that another facilities-based provider, McLeod USA, shows very limited facilities throughout Chicago.

The AG concludes that if UNE-P is no longer available to competitors, and the LWC and resale are the only non-facilities-based entry methods available, the Commission cannot expect competition to duplicate the protections inherent in regulation, which is the underlying intent and requirement of competitive reclassification under Section 13-502 of the Act.

Staff, on the other hand, agrees with AT&T that its residential package services are provided under competitive conditions. Staff’s analysis, based upon both the AT&T billing/E911 data and the Docket No. 06-0028 data, indicates that UNE-P, UNE-L and facilities-based provisioning present strong evidence of competition in residential package services throughout MSA-1. Staff also believes that LWC and third-party resale provisioning provide limited additional evidence of competition.

Staff asserts that prices are an imperfect tool for assessing the substitutability of different providers’ service offerings. Staff advises the Commission to consider the pricing information available to it, but to more heavily rely on and weigh actual provisioning activity in MSA 1 to determine whether AT&T Illinois properly reclassified residential service packages in Illinois MSA 1. Staff also directs our attention to the fact that there are at least two competitors in each of the 136 exchanges in MSA-1 demonstrating some level of competition throughout the region. In addition, data from AT&T Illinois’ wholesale records and the E9-1-1 database indicates, among other things, that there are at least four CLECs providing local exchange service in each of the 136 exchanges in the Chicago LATA, and the average number of CLECs providing service in each exchange is 29.

There is substantial disagreement in the record regarding whether, and/or the degree to which, wireless is a substitute for wireline service. There is a similar disparity of viewpoints
Regarding VoIP service. We agree with Staff and AT&T that it is likely that AT&T has lost residential customers to providers of each of these services in MSA 1. However, the evidence regarding these modalities is too imprecise for the Commission to reach any conclusion regarding the propriety of including VoIP or wireless competition in our Section 13-502 competitive analysis in this proceeding. In any event, we do not need to reach any conclusions regarding the propriety of inclusion of VoIP or wireless competition in our analysis to come to definitive findings regarding the competitive reclassification of the services at issue in this proceeding.

Similarly, the parties are at odds with regard to whether the Commission should consider the likelihood of the continued availability of the UNE-P platform in making its decisions herein. Although we are aware that our decision affirming the availability of UNE-P through Section 13-801 of the Illinois PUA is currently under review in federal court, we find that we are required to deal with the law as it exists today. We cannot properly base our opinion on speculation that our recent determinations regarding Section 13-801 will be overturned. To do otherwise, would create the anomaly of discounting the availability of UNE-P for decision making purposes, even as AT&T is required to continue providing this competitive entry platform to its competitors. At the same time, we recognize it is conceivable a future discontinuation of the Section 13-801 UNE-P platform could have significant impact upon the state of competition for at least some residential services in MSA-1. If that were to occur, the Commission could reexamine any or all of its determinations arrived at in this proceeding.

The state of competition in this industry overall, and specifically for residential services throughout MSA-1, is in constant flux for a variety of reasons. Nevertheless, we find that at the present time there is sufficient evidence of competition for AT&T’s flat rate residential package service offerings to sustain their competitive classification. On balance, we find Staff’s assessment of the available data to be sound and valid. The two most reliable data sources (AT&T billing/E911 data and Docket No. 06-0028 data), taken together, yield the same basic result. While there are some discrepancies in these data sources, that is to be expected; the discrepancies do not undermine their joint validity.

The evidence indicates that UNE-P and LWC are available throughout MSA-1. UNE-L, other Facilities Based and Third Party Resale platforms, although not present in every exchange, in aggregate provide additional substantial evidence of competition for AT&T’s residential package offerings. While LWC and Third Party Resale may not provide effective platforms with AT&T retail local service prices for all of the specific package rates at issue here, competitors utilizing these platforms can bundle their offerings with long distance service to make them attractive to consumers.[8]

Although products often cannot be compared on an item by item basis, overall, the record indicates that there is some level of effective competition in each package price range. We find that consistent with the requirements of Section 13-502 (c), the record demonstrates that for
AT&T package services:

(1) the number, size, and geographic distribution of other providers of the service are indicative of competition throughout MSA1;

(2) at the very least, wireline service is the functional equivalent in the relevant geographic area, and substitutable service is readily available in the relevant market at roughly comparable rates, terms, and conditions; and

(3) there are no substantial economic, technological, or other barriers to entry into, or exit from, the relevant market;

(4) while some providers must rely upon the services and infrastructure of AT&T or another telecommunications carrier, others are facilities based or use a combination of their own and resold facilities to provide telecommunications service;

(5) overall, the dependence of some CLECs on AT&T services does not indicate a lack of competition for package services in MSA 1;

(6) taking into account the full range of competition in MSA 1, we find, with the exceptions of the non-competitive Section 13-518 packages discussed below, that affording the competitive status of AT&T’s package offerings is consistent with the public interest.

**Competition for Measured service**

Almost all of the findings made for package service customers are equally true for measured service customers, such as the submitted evidence showing that two or more providers were, at the end of 2005, offering local telephone service to retail customers in every exchange in MSA-1.

It is hard to conclude that the competitors’ offerings are not functionally equivalent to the measured service offered by AT&T. Even leaving out the choices provided by wireless and VOIP alternatives, as we do when we make our findings regarding package service, there are wireline service options besides AT&T’s measured service offering. The fact the competitors’ wireline offerings allow the customer to make many more local calls (in fact, in many cases unlimited calls), does not change the fact that the customer’s use of a competitor’s service package is functionally equivalent to using AT&T measured service to make local telephone calls. The mere presence of additional features (more local and toll calls at no additional cost to the customer, vertical services, etc.) in a wireline competitor’s package offering does not impede the functionality of making a limited number of local calls. As a result, while other providers do not offer the exact same service, as described in Section 13-502 (c)(1), the evidence shows that functionally equivalent services are readily
available in the relevant geographical area.

In addition, consumers apparently consider service packages to be reasonable substitutes for measured service because the record shows that over 50% of AT&T Illinois’ customers in MSA-1 have migrated to its packages over the last five years. Also, not all measured service customers are “low usage” customers as the record shows that a substantial percentage of them make more than 100 calls a month. Furthermore, a customer’s usage patterns can certainly change over time, making package service more attractive when usage increases.

Given the level of competition for package service throughout MSA-1, it is beneficial for the Commission to understand why those competitors do not offer similarly priced measured service rates to target AT&T’s measured service customers who make few calls and do not take advantage of vertical services. Staff and Intervenors admit that competitors do not currently offer similar measured service plans because AT&T’s network access line and local usage are currently priced in a manner that makes it unprofitable for competitors to provide measured service at rates comparable to those offered by AT&T for low volume customers who do not also subscribe to vertical features. For example, a competitor using AT&T’s LWC to offer local exchange service pays AT&T a price that exceeds the rate AT&T charges its retail customers for measured service. Partly responsible for this seems to be the fact that the rate for LWC, and UNE-P’s TELRIC-based rate, for that matter, includes unlimited local calling and several vertical features. Staff specifically asserts that even though about one-third of AT&T Illinois’ residential customers in MSA-1 subscribe to measured service, no competitor is economically able to actively compete to serve low-usage residential measured service customers.

As Staff points out, while competitors are not offering prices comparable to AT&T Illinois’ measured service offering, this does not imply that there is no residence service in MSA-1 provided by competitors at rates comparable to those that would occur in a competitive market. In other words, it might very well be the case that the competitors’ service offerings are priced in accordance with a fully functioning competitive market and that AT&T Illinois’ current measured service offerings are priced below competitive levels. There are certainly several indications to believe that AT&T Illinois’ current rates for measured service are not at competitive levels.

AT&T correctly states that the last time its retail residential network access line rates have been increased was seventeen years ago in its 1989 rate case. Five years later, the Alternative Regulation plan capped the rates for all of its basic local exchange services and overall rate decreases have been occurring every year, resulting in a 33% decline of average annual basic revenues per stand-alone access line between 1995 and 2005.

Furthermore, AT&T Illinois’ current rates for a basic network access line are less than the forward looking total element long run incremental cost (i.e., UNE cost) that the Commission
has found an efficient provider would incur to provide that service. This in itself is very
strong evidence that AT&T Illinois’ current measured service prices are not at competitive
levels. Put differently, it is reasonable to conclude that the regulation of AT&T Illinois’ price
levels for the network access line and local usage has effectively created an economic
barrier to enter the market for local measured service at comparable rates, at least for some
customers. Another telling indicator is the fact that competitors in MSA-1 are providing
services at rates comparable to AT&T Illinois’ rates where the AT&T Illinois services pass
Staff’s imputation test but they are not offering rates comparable to those paid by customers
who take services that do not pass Staff’s imputation test.

Moreover, it is apparent from the record that this pricing problem will not correct itself, given
the constraints on AT&T Illinois’ non-competitive local exchange services by the Alternative
Regulation Plan. The Commission agrees with AT&T Illinois and Staff that corrective action
is appropriate and that proposals to simply reclassify these services as non-competitive
without further action cannot be justified from either a legal or policy perspective. The
Commission can either accept this current set of circumstances for a portion of AT&T’s local
measured service customers, and thus potentially foreclose the possibility of competitors
developing offers that are comparable to AT&T Illinois’ measured services, or the
Commission can take a close look at the solutions proposed by some parties in this Docket.
We believe the latter is the more responsible approach, given that Section 13-502(c)(5)
directs us to consider other factors that may affect competition and the public interest.
Hence, the Commission is of the opinion that its decision in this proceeding should
affirmatively address the pricing problems which Staff has identified. Parties and Staff
presented the Commission with two alternatives to correct potential barriers to competition.

The Commission has serious reservations about Staff’s rate rebalancing plan. As Staff itself
recognized, this approach is likely to lead to a protracted, contested proceeding. Staff’s
approach also concerns the Commission because AT&T Illinois’ overall local service
revenues would continue to decline under the requirements of the Alternative Regulation
Plan and because the rate adjustments would be revenue neutral in design and effect. The
Commission is not persuaded that competitors would find this segment of the marketplace
more attractive if there is no overall increase in revenue opportunities available to them from
these customers. In addition, Staff itself states that the Joint Proposal presents a
reasonable alternative to its proposed rate rebalancing plan.

Accordingly, the Commission finds that the market for measured service is properly
classified as competitive in MSA-1. The evidence in the record clearly establishes that there
are at least two providers providing functionally equivalent, substitutable service offerings in
every exchange in MSA-1. We emphasize that the competitive entries by several wireline
providers in MSA-1, as evidenced in this Docket, is occurring in a part of the state where the
population density is generally expected to attract higher competitive activity than in areas of
the state that are less densely populated. In considering factors listed in 13-502(c)(2), we
acknowledge that the rates charged by CLECs for their least expensive offerings are
generally higher than those charged by AT&T for measured service, however that is not the only factor we consider. The Commission is charged with considering all the factors contained in Section 13-502(c) when it evaluates reclassification filings. For example, Section 13-502(c)(3) directs us to consider the existence of “economic, technological, or any other barriers to entry into the relevant market”, and Section 13-502(c)(5) mandates that we consider “any other factors that may affect competition and the public interest that the Commission deems appropriate.”

Therefore, the Commission finds the Joint Proposal, with the exception of the Section 13-518 packages, and with the modifications as described below, to be the best approach. The rate commitments and safe harbor proposals provide an appropriate balance between the need for consumer protection and our policy objective that the current mispricing of some of AT&T Illinois’ residential local exchange services be corrected. As Staff recognized, the Joint Proposal is likely to result in competitive market rates for local exchange services more quickly and more effectively than Staff’s plan. The Commission finds it significant that AT&T Illinois and CUB were able to reach a set of commitments that they and Staff believe is reasonable, pro-competitive and pro-consumer. The Commission does not find the criticisms which the Attorney General and other parties have made of the Joint Proposal to be persuasive. Since its purpose is to provide safe harbors to certain customer groups and only to those customers who want them, the Commission does not find that the limited nature of these safe harbors or the proposed rate reductions to be a drawback of the Plan. Indeed, if all customer rates were completely protected, then any re-pricing that took place would have no effect on the marketplace and thus not serve the Commission’s policy objective. Although the Joint Proposal will allow increases in stand-alone service rates, the Commission agrees with the Joint Movants and Staff that the Joint Proposal’s safe harbor and rate cap provisions have the potential to move rates toward competitive levels while affording low usage consumers with no demand for vertical services, significant price protections over the next four years.

The Commission is not convinced that rate increases per se would negatively impact universal service to a degree that defeats the policy benefits of the Joint Proposal. Both AT&T Illinois and Staff point out that, in the ranges expected under this Proposal, rates will still be affordable. Although the Attorney General claims that Illinois has unique “phonelessness” problems, the Commission remains unconvinced. The FCC’s data is inconsistent with the Lieutenant Governor’s 2004 report. Moreover, even if Illinois subscriber levels were lower than in some neighboring states, there is no evidence that they are related to AT&T Illinois’ basic service rates, which have consistently declined over this period. The Commission also finds persuasive AT&T Illinois’ contention that existing low income support programs (e.g., Lifeline) are underutilized in Illinois and that the vast majority of low income customers can obtain assistance if prices increase.

In conclusion, this Commission has weighed the competitive and consumer impacts of the modified Joint Proposal and concluded that, overall, the public interest will be served by
allowing it to proceed at this time. While the Commission accepts the Joint Proposal, we make certain adjustments that will primarily enhance Commission oversight and overall transparency of the consumer education measures. The Commission obviously has a great interest in maximizing the savings for consumers under the Joint Proposal. As stated many times in this Order, the actual customer savings in the future depend primarily on the number of measured service customers switching to one of the three packages. In other words, the Commission’s actions in this Docket will be evaluated partly by our responsibility to take into account the factors affecting the public interest as directed by Section 13-502(c)(5) of the PUA. Given the stakes attached to this competitive reclassification, the Commission, in exercising its oversight authority, must ensure that consumer savings are maximized.

To this end, we direct the Joint Movants to submit the new names of the three safe harbor packages for Commission review. Second, AT&T and CUB are directed to work with Commission Staff on the design of the seven customer bill messages and inserts. In addition, we direct that the first of such bill messages or inserts be included within the first three billing cycles after the entry of this order. Third, to monitor the actual progress of the consumer education campaign, and thus the actual consumer savings, AT&T is directed to semi-annually report to the Commission the number of customers subscribing to each of its services, including the three safe harbor packages. Proprietary data shall be accorded confidential and proprietary treatment upon request by AT&T. Fourth, AT&T should undertake a statistically-valid survey of its existing measured service customers to determine their demographic and usage characteristics. The results of the survey should be reported to the Commission within six months of the date of the Final Order. Fifth, similar to our requirements regarding the Section 13-518 packages discussed below, AT&T shall allow customers to subscribe to the safe harbor packages online. Ease of ordering the safe harbor packages is paramount to helping customers make the switch once it becomes economical for them to do so. To this end, we direct AT&T Illinois to ensure that these packages can be ordered on its website in a manner similar to its other residential services. Finally, in order to avoid a delayed rate shock, the Commission requires that any network access line rate increase in years 3 or 4 of the Joint Proposal not exceed $2 per year. In the event AT&T foregoes all or part of its allowed maximum rate increases in the earlier years, we want to ensure that increases in the later years will not lead to rate shock for residential measured service customers.

With these modifications, the Commission believes it has struck a fair balance between recognizing the functionally equivalent alternatives for customers of AT&T’s measured service and the need to ensure that the transition from a non-competitive to a competitive classification avoids sharp price increases for customers who make little use of the network. The Commission intends to monitor this transition and the overall development of competition levels in MSA-1 very carefully, and we will not hesitate to take corrective action when deemed appropriate.

As AT&T acknowledged, the Commission can, and will, continue to monitor the status of the local exchange services at issue in this case. To that end, the Commission directs AT&T to file a report on an annual basis—beginning with information as of December 31, 2006—that will be used in
analyzing the competitiveness of the telecommunications market in MSA-1, including information regarding competition for the provision of local service from CLECs, wireless carriers, VoIP providers and other alternative technologies. This information should include, but not necessarily be limited to, an updated version of the Schedules WKW-5 and WKW-9, attached to AT&T Exhibit 1.0. To the extent necessary to provide the information requested for MSA-1, AT&T is directed to use and report the most currently available E-9-1-1 and wholesale records data of the type presented by AT&T in this proceeding. Proprietary data shall be accorded confidential and proprietary treatment upon request by AT&T.

The Commission will also initiate a formal proceeding commencing at the beginning of the fourth year of the Joint Proposal to re-evaluate the status of competition and to reaffirm its findings in this proceeding, or to make the appropriate changes.

The Commission retains its authority to investigate competitive rate changes if and when the need arises. Given this, and based on the entire record developed in this proceeding, the Commission has examined the potential impact of the modified Joint Proposal on AT&T Illinois and its consumers and has concluded that it is reasonable, in the public interest and consistent with Section 13-502(c)(5).

The Commission also finds that it may accept the Joint Proposal under the legal standard established in Business and Professional People for the Public Interest v. Illinois Commerce Commission, 136 Ill.2d 192 (1989) (“BPI”). Given the lack of unanimous support for the Joint Proposal, adoption of the Joint Proposal must be supported by independent record evidence. Specifically three criteria must be satisfied: 1) the provisions of the settlement agreement must be within the Commission’s authority to impose; 2) the provisions must not contravene the PUA; and 3) substantial evidence must exist in the record to independently support the provisions of the proposed settlement.

First, the Commission notes that it has often relied on a utility’s voluntary acceptance of conditions that it could not otherwise impose in other non-ratemaking contexts. For example, in the original Alternative Regulation Plan proceeding under Section 13-506.1, AT&T Illinois made a voluntary commitment to spend $3 billion on its network over the first five years of the Plan. The Commission recognized this commitment in its overall evaluation of the Plan and imposed reporting requirements on AT&T Illinois to ensure that the commitment was met.[9] In the SBC/Ameritech Merger proceeding, the Commission relied on a host of commitments by SBC and Ameritech that went far beyond what it could have imposed on the Company under Section 7-204 of the Act.[10] In the Illinois Section 271 docket, the Commission also accepted and relied on voluntary commitments by AT&T Illinois as part of its determination that the Company’s markets were open to competition in compliance with the federal Act.[11]

The Joint Proposal contains two provisions that do not require Commission acceptance- AT&T Illinois has agreed to provide CUB with $2.5 million to fund consumer education and
outreach programs and to expand DSL availability. These provisions are voluntary
commitments by AT&T Illinois that the Commission need not analyze under BPI. However,
the Commission does have authority to reclassify non-competitive services under Section 13-
502 of the PUA. Since the reclassification of services rests solidly within the Commission’s
authority, our adoption of this aspect of the Joint Proposal meets the first condition of the
BPI analysis.

Second, the Commission must determine whether the provisions of the Joint Proposal
contravene the PUA. Upon review of the Joint Proposal, the Commission finds nothing that would
violate any provision of the PUA. Therefore, the Joint Proposal meets the second condition of the
BPI analysis.

Finally, the Commission must find that substantial record evidence exists to independently
support the provisions of the Joint Proposal. As discussed earlier, the record indicates that there is
some level of effective competition in each package price range and that the competitive status of
AT&T’s package offerings is consistent with the public interest. The evidence further indicates that
AT&T Illinois’ current measured service prices are not at competitive levels. The Commission
finds that the record contains substantial evidence that independently supports approving
the joint proposal. Pursuant to Section 13-502(c)(5), the Commission may consider other
factors that may affect competition and the public interest. The Joint Proposal affirmatively
addresses the pricing problems identified in the record and provides consumer protection
provisions. The Commission finds that this approach is consistent with Section 13-502(c) in
its entirety. Therefore, the Joint Proposal meets the third condition of the BPI analysis.

VII. Reclassification of Section 13-518 Packages

A. Attorney General’s Motion

Section 13-518 of the Public Utilities Act requires that Illinois Bell Telephone Company
(“IBT”) offer customers three service packages containing specific features. Section 13-518
also specifically directs that these service packages “shall be defined as non-competitive
services.”

These statutory service packages are defined as:

(1) A budget package, which shall consist of residential access service and unlimited local
calls; (2) A flat rate package, which shall consist of residential access service, unlimited;
local calls, and the customer’s choice of 2 vertical services as defined in this Section; and,
(3) An enhanced flat rate package, which shall consist of residential access service for 2
lines, unlimited local calls, the customer’s choice of 2 vertical services as defined in this
Section, and unlimited local toll service.
The “budget package” described in section 13-518(a)(1) has been identified by IBT as the Residence Saver Pack Unlimited, at a price of $9.50, plus the price of a residence access line. The total price is $12.05 in Access Area A, $15.03 in Access Area B and $18.50 in Access Area C.

The “flat rate package” described in section 13-518(a)(2) has been identified by IBT as the Flat Rate Package at the following prices: Access Area A, $19.10; Access Area B, $22.08; Access Area C, $23.50.

The “enhanced flat rate package” described in section 13-518(a)(3) has been identified by IBT as Enhanced Flat Rate Package at the following prices: Access Area A $53.79; Access Areas B and C, $56.79.

These rates are among those reclassified by AT&T on November 11, 2005.

On March 23, 2006 the Attorney General moved for summary judgment and for an order directing AT&T to reclassify certain services as non-competitive in conformity with Section 13-518 of the Public Utilities Act. In the motion for summary judgment, the Attorney General submitted that on November 11, 2005, IBT reclassified three ‘Optional Service’ Section 13-518 packages from non-competitive to competitive in violation of the Public Utilities Act, Section 13-518. The AG argued that the reclassification was invalid as a matter of law, because Section 13-518 requires that IBT offer customers three service packages containing the specific features of the reclassified packages and the plain language of the statute specifically directs that these packages be non-competitive (People of the State of Illinois’s Motion for Summary Judgment and Reclassification of Section 13-518 Packages, 1-3).

The motion was taken under advisement by the Administrative Law Judge.

B. AT&T’s Position

AT&T argues that Section 13-518 does not require that these packages be returned to a noncompetitive classification as a matter of law (AG Motion, ¶¶ 9-11). Section 13-518 was enacted as part of legislation in 2001 that, inter alia, addressed the appropriate classification of a number of AT&T Illinois services. All of AT&T Illinois’ business services were declared competitive immediately as a matter of law, subject to a four-year cap on services provided to business customers with 1-4 lines (Section 13-502.5(b)). All of AT&T Illinois’ residence central office features were also declared competitive as a matter of law effective June 1, 2003, with the exception of Caller ID and Call Waiting (Section 13-502.5(c)). It was as part of this legislation that the General Assembly imposed the obligation on AT&T Illinois to offer the three rate plans that are the subject of the Attorney General’s Motion: the Residence Saver Pack Unlimited, the Flat Rate Package and the Enhanced Flat Rate Package.
AT&T contends that at the time that these offerings were mandated by the General Assembly, some direction regarding their classification was necessary. Section 13-518 dictates which features and functionalities must be offered in these packages, and, even in 2001, they included noncompetitive, competitive and deregulated services. Moreover, five of the eligible features that were noncompetitive in 2001 would become competitive on June 1, 2003 under Section 13-502.5(c). The status of the various service components in the Section 13-518 packages is as follows:

<table>
<thead>
<tr>
<th>Functionality</th>
<th>2001</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unlimited local calling</td>
<td>noncompetitive</td>
<td>noncompetitive</td>
</tr>
<tr>
<td>Call Waiting</td>
<td>noncompetitive</td>
<td>noncompetitive</td>
</tr>
<tr>
<td>Call Forwarding</td>
<td>noncompetitive</td>
<td>competitive</td>
</tr>
<tr>
<td>3-Way Calling</td>
<td>noncompetitive</td>
<td>competitive</td>
</tr>
<tr>
<td>Caller ID</td>
<td>noncompetitive</td>
<td>noncompetitive</td>
</tr>
<tr>
<td>Call Tracing</td>
<td>noncompetitive</td>
<td>competitive</td>
</tr>
<tr>
<td>Automatic Callback</td>
<td>noncompetitive</td>
<td>competitive</td>
</tr>
<tr>
<td>Repeat Dialing</td>
<td>noncompetitive</td>
<td>competitive</td>
</tr>
<tr>
<td>Voicemail</td>
<td>deregulated</td>
<td>deregulated</td>
</tr>
<tr>
<td>Unlimited local toll calling</td>
<td>competitive</td>
<td>competitive</td>
</tr>
</tbody>
</table>

ATT argues that the PUA establishes clear dichotomies between regulated and deregulated services; and, within the regulated category, between competitive and noncompetitive services. There is no express service classification provision that covers hybrid packages that include all three. As a result, it would have been difficult to classify these packages under the PUA. To avoid disputes, the General Assembly simply dictated that each of the three packages should be classified as noncompetitive at that time.

AT&T contends that nothing in Section 13-518 even remotely suggests that the General Assembly intended this initial classification to continue for all time or that it intended to exempt these services from the normal reclassification process under Section 13-502. Likewise, there is no exception in Section 13-502 that would exclude the Section 13-518 service packages from future reclassification. It is a longstanding principle of statutory construction that statutes are to be construed as a whole, in a manner that maintains consistency and avoids nullifying other provisions. Land v. Board of Educ. of the City of Chicago, 202 Ill. 2d 414, 421-22 (2002). This case describes the relevant rules of construction as follows:

The appellate court, in its effort to give effect to all of the relevant sections of the School Code, invoked the doctrine of in pari materia. 325 Ill.App.3d at 307, 259 Ill.Dec. 49, 757 N.E.2d 912. Under this doctrine of construction, two legislative acts that address the same subject are considered with reference to one another, so that they may be given harmonious effect. See United Citizens of Chicago & Illinois v. Coalition to Let the People Decide in 1989, 125 Ill.2d 332, 339, 126 Ill.Dec. 175, 531 N.E.2d 802 (1988). This court has
previously held that sections of the same statute should also be considered *in pari materia*, and that each section should be construed with every other part or section of the statute to produce a harmonious whole. *Sulser v. Country Mutual Insurance Co.*, 147 Ill.2d 548, 555, 169 Ill.Dec. 254, 591 N.E.2d 427 (1992). The doctrine is consistent with our acknowledgment that one of the fundamental principles of statutory construction is to view all of the provisions of a statute as a whole. *Michigan Avenue National Bank*, 191 Ill.2d at 504, 247 Ill.Dec. 473, 732 N.E.2d 528. Words and phrases should not be construed in isolation, but interpreted in light of other relevant portions of the statute so that, if possible, no term is rendered superfluous or meaningless. *Michigan Avenue National Bank*, 191 Ill.2d at 504, 247 Ill.Dec. 473, 732 N.E.2d 528; *In re Marriage of Kates*, 198 Ill.2d 156, 163, 260 Ill.Dec. 309, 761 N.E.2d 153 (2001). Further, we presume that the legislature, when it enacted the statute, did not intend absurdity, inconvenience, or injustice. *Michigan Avenue National Bank*, 191 Ill.2d at 504, 247 Ill.Dec. 473, 732 N.E.2d 528.

AT&T argues that to give effect to both Sections 13-502 and 13-518, Section 13-518(d) should be construed as determining the *initial classification* of these packages, but not as precluding reclassification under Section 13-502 at a later point in time when the features and functionalities within those packages have become competitive. It would work an “absurdity” to interpret Section 13-518 as requiring a noncompetitive classification for these three rate plans even if packages developed by AT&T Illinois providing exactly the same functionalities are properly classified as competitive under Section 13-502 and all of the individual functionalities within those plans are competitive as well. This would make Section 13-502 “superfluous” and “meaningless,” thus violating the applicable rules of statutory construction.

The mere fact that Section 13-518 contains the word “shall” does not change the analysis. This legislative direction as to proper classification for these packages was admittedly mandatory in 2001. However, that does not mean that the packages “shall” be classified as noncompetitive *forever*. Under the PUA, any noncompetitive service can be reclassified if the standards in Section 13-502 are satisfied.

Finally, the General Assembly knew how to foreclose the Commission’s authority under Section 13-502 when it intended that result. It do not do so with respect to Section 13-518. As noted above, at the same time that Section 13-518 was enacted, all business services were declared competitive immediately. The relevant statutory language in Section 13-502.5(b) is as follows:

(b) All retail telecommunications services provided to business end users by any telecommunications carrier subject, as of May 1, 2001, to alternative regulation under an alternative regulation plan pursuant to Section 13-506.1 of this Act shall be classified as competitive as of the effective date of this amendatory Act of the 92d General Assembly *without further Commission review.*” (Emphasis added).
The same “without further Commission review” language appears in Section 13-502.5(c), which declared residence central office features (with the exception of Caller ID and Call Waiting) competitive as of June 1, 2003. Had the General Assembly intended that the classification direction in Section 13-518 foreclosed further Commission review under Section 502, it could have added this same “without further review” language to Section 13-518 as well. No such language appears there. In the alternative, if the General Assembly intended that the initial non-competitive classification in Section 13-518 foreclosed further Commission review under Section 13-502, it would have excluded the Section 13-518 service packages from its scope. No such language appears in Section 13-502. Accordingly, based on the plain language of Section 13-502, this Commission must classify the service packages required by Section 13-518 as competitive if the standards in Section 13-502 are satisfied based on the evidence in this case.

C. Staff’s Position

Staff asserts that whether the classification of the three packages in question as competitive violates Section 13-518 requires consideration of whether the Illinois General Assembly intended to modify the provisions of Section 13-502 and that section’s clear delegation of authority to the Illinois Commerce Commission to determine whether a service should be reclassified as competitive.

Section 13-518 of the Act also states that the three statutory “optional packages” in that Section shall be subject to Commission review. The services are to be offered for a fixed monthly rate, and those rates “along with the terms and conditions thereof, the Commission shall review, pursuant to Article IX of this Act, to determine whether such rates, terms, and conditions are fair, just, and reasonable.” 220 ILCS 5/13-518.

It is clear from a reading of the act that a mere classification of a service as competitive does not, on its own, render that service immune from Commission oversight as to whether the rates for that competitive service are just and reasonable. Section 13-505(b) of the Act states:

If a hearing is held pursuant to Section 9-520 regarding the reasonableness of an increase in the rates or charges of a competitive local exchange service, then the telecommunications carrier providing the service shall have the burden of proof to establish the justness and reasonableness of the proposed rate or charge. 220 ILCS 5/13-505(b) (emphasis added.)

Staff argues that because Section 13-518 subjects the three statutory services and the rates, terms and conditions thereof to Commission review, and because both competitive and non-competitive rates are subject to the “just and reasonable” standard under Article IX, the question becomes whether the General Assembly intended to remove those three packages from the scope of Article XIII Section 13-502 of the Public Utilities Act and Article XIII’s clearly articulated policy that “...competition in all telecommunications service markets should be pursued as a substitute for regulation in determining the variety, quality, and price
of telecommunications services…” 220 ILCS 5/13-103.

The Attorney General argues that the General Assembly, in enacting Section 13-518, intended to remove these three statutory packages from Commission review under Section 13-502. The Attorney General asserts that the “plain meaning” doctrine dictates that the Commission find that the 13-518 packages were improperly reclassified as a matter of law. The Attorney General notes that the “cardinal rule of statutory interpretation” is to ascertain and give effect to the intent of the legislature, citing *People v. Maggette*, 195 Ill.2d 336, 348, 747 N.E.2d 339, 346 (2001). The Attorney General cites *Illinois Graphics Co. v. Nickum*, 159 Ill.2d 469, 479, 203 N.E.2d 1282, 1287 (1994) for the proposition that the “best indication of legislative intent is the statutory language, given its plain meaning.”[12]

Staff agrees with the AG that Section 13-518(d), on its own, offers a “plain meaning” of the General Assembly’s intent. However, the statute has a non-prefatory statement of intent that casts some doubt on the “plain meaning” argument. Section 13-518(a) states that the packages shall be provided, with the intent that the packages be provided at “prices that will result in savings for the average consumer.” 220 ILCS 5/13-518(a). Further, the Commission is to review the packages, pursuant to Article IX, to determine “whether such rates, terms, and conditions are fair just and reasonable.” Therefore, it is not unreasonable to look up the page from the plain meaning of paragraph (d) to paragraph (a) for indication of intent, especially when paragraph (a) is prefaced by stating “It is the intent of this Section…[.]”

Staff asserts that it is clear, under the plain meaning doctrine or any other rule of statutory construction, that the General Assembly intended the Section 13-518 packages to be subject to Commission review under Article IX. Did the legislature intend for the competitive vs. non-competitive designations to be included in that review, or did it mean “rates, terms, and conditions” other than whether the package had been designated competitive or non-competitive? This, Staff contends it is not entirely clear from the language of the statute. If legislative intent, as stated in paragraph (a), was to allow for review of competitive designations, then the question is a temporal one – paragraph (d) designates or “defines” the services as noncompetitive at the time of their creation pursuant to statute, but does not foreclose the possibility of reclassification.

AT&T Illinois recognizes the temporal nature of the question when it argues that Section 13-518’s designation of the three packages as noncompetitive was designed to eliminate any confusion that may have resulted from the creation of statutory packages that would include both competitive and noncompetitive services:

There is no express service classification provision that covers hybrid packages that include all three [deregulated, competitive and noncompetitive services]. As a result, it would have been difficult to classify these packages under the PUA. To avoid disputes, the General Assembly simply dictated that each of the three packages should be classified as
Thus, AT&T argues, the noncompetitive classification in paragraph (d) of Section 13-518 should be construed as an initial classification of the three packages, which does not act to preclude reclassification under Section 13-502 at a later point in time. Therefore, arguably, the General Assembly did indeed classify these three packages as non-competitive in the context of the other reclassifications and modifications or amendments to the PUA that were going on at the time, i.e., it established these three packages as non-competitive as a baseline, with the “understanding” that the Commission would use its delegated powers to reevaluate the designation should conditions warrant. AT&T Illinois’ explanation of the context of the enactment of Section 13-518, when coupled with the statute’s clear reference to the Commission power to “determine whether such rates, terms, and conditions are fair, just, and reasonable,” lends some credence to the argument that allowing the reclassification of the Residence Saver Pack Unlimited, Flat Rate Package, and Enhanced Flat Rate Package is within the Commission’s discretion.

However, Staff is of the opinion that, if this was the intent of the General Assembly, the General Assembly would have made that intent more clear. The Commission, as a creature of the legislature beholden to its initiatives, is not in a position to unduly expand its own power and override a legislative enactment when there remains a question as to whether the legislature intended to allow for such an override. 220 ILCS 5/2-101, 4-101 (West 2005), Regional Transportation Authority v. ICC, 118 Ill.App.3d 685, 694, 455 N.E.2d 172, 178 (1st Dist. 1983) (the power and authority of the Commission comes strictly from statutory enactment, and Commission cannot by its own actions extend its jurisdiction).

Thus, in this sense, the Attorney General is correct; subsection (d)’s plain meaning: “[t]he service packages described in this Section shall be defined as noncompetitive services” is controlling as the best interpretation of the statute as a whole. In addition, subsection (a)’s statement of intent limits the review of the Commission to Article IX and the evaluation of whether package rates are “fair, just, and reasonable” within the meaning of that Article. Section 13-502’s criteria for evaluating competitive classifications are arguably outside the parameters of Article IX. The Commission should heed the General Assembly’s stated directive, with regard to the three service packages offered pursuant to Section13-518, and limit its review of these packages to a determination of whether those offerings are fair, just, and reasonable.

D. CCSAO Position

The CCSAO argued that the optional service packages provided pursuant to Section 13-518 are noncompetitive as a matter of law. The Illinois General Assembly in Section 13-518 provided for three optional services packages. This Section’s source was Public Act 92-22
and has been effective since June 30, 2001.

The CCSAO contended that in deciding whether these packages are competitive or noncompetitive, the Commission needs to look no further than the Public Utilities Act. The legislature provided in the Act that the packages in Section 13-518 are noncompetitive and clearly stated that: “…the service packages described in this Section shall be defined as noncompetitive services…” 220 ILCS 5/13-518(d).

The CCSAO argued that the Illinois Commerce Commission lacks the authority to allow the packages to remain classified as competitive where Illinois law provides that they are noncompetitive. Ultimately, the Commission’s authority is limited to that provided by Illinois law. The Illinois Commerce Commission was created pursuant to what is now Section 2-101 of the Public Utilities Act. 220 ILCS 5/2-101. The duties and general powers of the Commission are described in Article 4 and elsewhere throughout the Public Utilities Act. 220 ILCS 5/4 et. al. As the Illinois Supreme Court has noted “…The sole power of the Commission stems from the statute, and it has the power and jurisdiction only to determine facts and make orders concerning the matters specified in the statute. (citation omitted)…” Union Electric Company v. The Illinois Commerce Commission et al., Illinois Bell Telephone Company v. The Illinois Commerce Commission, 77 Ill.2d 364, 383, 396 N.E.2d 510, 519 (1979).

The CCSAO noted that the language in Section 13-518 is clear and to the point. The Commission should be consistent with that language and find that the packages are noncompetitive as a matter of law. With respect to statutory construction the Illinois Supreme Court stated in the case of In re Estate of Herman J. Dierkes (Estate of Herman J. Dierkes, Appellee; The Department of Transportation, Appellant). 191 Ill. 2d 326, 331, 730 N.E.2d 1101 (2000):

The cardinal rule of interpreting statutes, to which all other canons and rules are subordinate, is to ascertain and give effect to the intent of the legislature. In determining legislative intent, a court should first consider the statutory language. King v. Industrial Comm’n, 189 Ill. 2d 167, 171, 244 Ill. Dec. 8, 724 N.E.2d 896 (2000); McNamee v. Federated Equipment & Supply Co., 181 Ill. 2d 415, 423, 229 Ill. Dec. 946, 692 N.E.2d 1157 (1998). Specifically in construing the Act, all portions thereof must be read as a whole, and in such a manner as to give them the practical and liberal interpretation intended by the legislature. McNamee, 181 Ill. 2d at 428; K. & R. Delivery, Inc. v. Industrial Comm’n, 11 Ill. 2d 441, 445, 143 N.E.2d 56 (1957).

Further in the Illinois Supreme Court in Western National Bank of Cicero, Trustee, et al., v. The Village of Kildeer et al., 19 Ill. 2d 342, 350, 167 N.E.2d 169 (1960) stated:

It is a primary rule in the interpretation and construction of statutes that the intention of the legislature should be ascertained and given effect. (Petterson v. City of Naperville, 9 Ill.2d 233; Belfield v. Coop, 8 Ill.2d 293.) This is to be done primarily from a consideration of the legislative language itself, which affords the best means of its exposition, and if the legislative intent can be ascertained there from it must prevail and will be given effect without resorting to other aids for construction. (People ex rel. Mayfield v. City of Springfield, 16 Ill.2d 609; Louis A. Weiss Memorial Hospital v. Kroncke, 12 Ill.2d 98.) There is no rule of construction which authorizes a court to declare that the legislature did not mean what the
plain language of the statute imports. The CCSAO contends that in looking to the language of the statute, the Commission should conclude the plain meaning of the statute leads one to conclude that the 13-518 packages are noncompetitive as a matter of law.

A principle of statutory construction the Commission may consider was discussed by the Illinois Supreme Court in *Metzger v. DaRosa*, 209 Ill.2d 30, 44, 805 N.E.2d 1165 (2004) where the court noted that:

The familiar maxim *expressio unius est exclusio alterius* is an aid of statutory interpretation meaning "the expression of one thing is the exclusion of another." Black's Law Dictionary 581 (6th ed. 1990). "Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions ***." *Burke v. 12 Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 442, 593 N.E.2d 522, 170 Ill. Dec. 633 (1992). This rule of statutory construction is based on logic and common sense. It expresses the learning of common experience that when people say one thing they do not mean something else. The maxim is closely related to the plain language rule in that it emphasizes the statutory language as it is written. 2A N. Singer, Sutherland on Statutory Construction § 47.24, at 228, § 47.25 at 234 (5th ed. 1992).

The CCSAO argued that where the statute said noncompetitive, the Commission should not conclude that they somehow meant something else.

The CCSAO noted with respect to certain packages, one of the only factual questions for the Commission to decide is which of the tariffs are being provided pursuant to Section 13-518. Which packages constitute the Section 13-518 packages is not something that has been contested in this case. ICC Staff witness Dr. James Zolnierek testified with respect to which packages are provided pursuant to Section 13-518 and stated:

…A. IBT currently provides: (1) a Residence Saver Pack Unlimited, provided since September, 4, 2001, pursuant to Section 13-518(a)(1) of the Act; (2) a Flat Rate Package, provided since August 12, 2002, pursuant to Section 13-518(a)(2) of the Act; and (3) an Enhanced Flat Rate Package, provided since August 12, 2002, pursuant to Section 13-518(a)(3) of the Act. Each of these packages is described below… (citation omitted)[13] ICC Staff Ex. 2.0 at 12-13 (Zolnierek).

The CCSAO contends that in light of the legislature’s creation of these three packages and the Act’s classification of them as noncompetitive, the Commission is required to reclassify the three packages as noncompetitive. To the extent that AT&T is unhappy with the law, they need to seek change in the legislature. Until then consumers are entitled to those packages being offered as noncompetitive services.

The CCSAO in its brief adopted those AG’s arguments contained in the Motion for Summary Judgment and urges the Commission to grant the motion immediately.

E. Commission Discussion and Analysis

The Commission agrees with Staff’s and Intervenor’s analysis that the Section 13-518 packages should be reclassified as non-competitive. To determine whether AT&T’s classification of the these packages as competitive violates Section 13-518, we must
consider whether the General Assembly intended to modify Section 13-502’s clear delegation of authority to the Illinois Commerce Commission to determine whether a service should be reclassified as competitive.

Discerning statutory intent here is not as straightforward as the arguments of the both sides suggest. The general rule of construction is that specific language such as “... the service packages described in this Section shall be defined as noncompetitive services” trumps non-specific statements of intent. However, in addition to the specific language of Section 13-518, the General Assembly, in Section 13-502 specifically delegated to this Commission the power to determine whether services are competitive or non-competitive. Furthermore, Section 13-518(a) states that the packages shall be provided at “... prices that will result in savings for the average consumer.” It also states that the Commission is to review the packages, pursuant to Article IX, to determine “whether such rates, terms, and conditions are fair, just and reasonable.” As Staff argues, when read together it is not patently clear that the General Assembly intended to limit the Commission’s review to determining whether these packages were fair just and reasonable or whether the initial non-competitive status of these was to be reviewable by the Commission at some later time.

While AT&T argues that nothing in the statute explicitly prevents reclassification of the Section 13-518 packages and that statutory construction rules dictate that Section 13-502 should be read as controlling if the competitive criteria are met, the Commission finds that the plain language argument is the more reasonable canon of statutory construction to apply in this situation. The language of Section 13-518 clearly states that the three optional service packages are classified as non-competitive. Without specific contravening language supporting the opposite result, the Commission finds that it should not risk overstepping its explicitly delegated authority.

We find that the more reasonable interpretation is that the General Assembly mandated that the Section 13-518 packages remain non-competitive and that the Commission’s oversight is limited to a determination that the rates are fair, just and reasonable. As Staff argues, if the General Assembly intended the opposite result it would have made that clear. Accordingly, AT&T is hereby directed to file, within 45 days of entry of this order, tariffs classifying Section 13-518 package services, namely the Flat Rate Package, Enhanced Flat Rate package, and Residence Saver Pack Unlimited, as non-competitive. There is a related topic that is well within the Commission’s purview. The record establishes that very few customers have selected the Section 13-518 packages. We believe that this may be in part because a potential customer cannot order these packages on the AT&T website. In order to select one of these packages it is necessary for the customer to speak to an AT&T marketing representative. There is nothing to prevent the representative from dissuading such a customer from subscribing to a Section 13-518 package. We direct AT&T to adjust its website so that customers can subscribe to the Section 13-518 packages on their computer without having to speak to AT&T representatives. We further direct AT&T to adjust its website so that customers can subscribe to “stand alone” residential NAL offerings on their
VIII. SECTION 13-505.1 IMPUTATION

A. AT&T Position

AT&T Illinois explained that, under Section 13-505.1 of the PUA it, must “impute” to its competitive services the rates for “noncompetitive services or non-competitive service elements” which are provided to a competing carrier and which are utilized by that carrier in providing competitive retail services. 220 ILCS 5/13-505.1. AT&T Illinois’ retail rates “pass” imputation if they are equal to or exceed the costs required to be imputed. AT&T Illinois presented the results of imputation analyses for all of the services subject to the reclassification, and under its recommended formulation of these tests, all of them passed. AT&T Illinois contends that the structure of most imputation tests is straightforward, and that its studies were consistent with longstanding past practice for most products. AT&T Illinois asserts that only the imputation test for residence network access lines was in dispute.

According to AT&T Illinois, imputation analysis for network access lines presents a special case, because the network access line in and of itself provides no functionality and simply enables customers to make and receive calls and utilize network features. Therefore, a network access line imputation test necessarily includes the costs and revenues associated with the line itself and other functionalities that can reasonably be attributed to it.

AT&T Illinois points out that, in Docket No. 04-0461, the Commission approved the structure of an imputation test for business network access lines. Order in Docket No. 04-0461, adopted June 7, 2005. In that docket, the Commission used a case-by-case analysis to determine how the “service” should be defined for imputation purposes. Specifically, the Commission approved the inclusion of Bands A and B local calling and switched access services, but rejected central office feature revenues in the analysis.

AT&T Illinois states that in this proceeding, consistent with the Commission’s Order, it has applied a case-by-case analysis to residence network access lines. AT&T Illinois concludes that the “service” should include Bands A and B calling, switched access service and central office feature revenues, based on differences between business and residence pricing policies and customer behavior. AT&T Illinois opposed Staff’s position that neither Bands A and B local calling nor central office feature revenues should be included in the imputation test.

1. Bands A and B Local Usage

AT&T Illinois contended that, contrary to Staff’s position, Section 13-505.1 does not prohibit the inclusion of untimed Bands A and B usage in the imputation test for residence network access lines. AT&T Illinois explained that the issue of untimed calling arises uniquely in the context of residence network access lines due to the fact that the exemption in Section 13-
Section 13-505.1 is residence-specific and because all residence Bands A and B usage is untimed. AT&T Illinois explained that when Section 13-505.1 was enacted in 1992, the broad category of “switched interexchange services” were subjected to imputation testing. However, this requirement carried with it a risk of rate increases for residence local calls, because carriers like AT&T Illinois were billing some interexchange calling routes as local untimed calls to residence customers at rates that were lower than the then applicable carrier access rates paid by IXCAs. In AT&T Illinois’s view, the specific purpose of this exemption was to protect residence customers from the potential for rate increases. AT&T Illinois argues that the effect of Staff’s interpretation was precisely the opposite of the General Assembly’s intent, i.e., it increases the likelihood that residence local service prices would have to increase due to imputation requirements. AT&T Illinois argued that it is an accepted canon of statutory construction that statutes should be construed so as to carry out the purpose of the legislature and that Staff’s approach does not do so. People v. Latona, 184 Ill. 2d 260, 269 (1998); Barr v. Kelso-Burnett Co., 106 Ill. 2d 520, 527 (1985).

AT&T Illinois also disputed Staff’s argument that its approach is required by the plain language of Section 13-505.1. AT&T Illinois contends that Section 13-505.1 only prohibits residence untimed calls from being subject to an imputation test themselves: i.e., “the portion of a service consisting of residence untimed calls shall be excluded from the imputation test.” According to AT&T Illinois, this statutory language begs the question “what test” because there are two imputation tests at issue in this proceeding: (1) imputation testing for untimed Bands A and B usage on a service-specific basis; and (2) imputation testing for the residence network access line. AT&T Illinois noted that it and Staff were in complete agreement that this language controls how the first test must be conducted. Since the plain meaning of the exclusion in Section 13-505.1 exempts all untimed usage from having to satisfy its own imputation test, no tests are required for Bands A and B calling. In other words, AT&T Illinois argued, it is not asking the Commission to ignore the provisions of Section 13-505.1, nor is it treating the exemption language as a “curious historical relic,” as Staff contended. The Company stated that it had applied the exemption where required and where the General Assembly clearly intended that it apply.

AT&T Illinois stated that it and Staff parted company on the second test involving residence network access lines. AT&T Illinois pointed out that imputation testing for network access lines is of very recent vintage. As the Commission explained in Docket No. 04-0461, imputation testing for the business network access line was a matter of first impression in 2005 and neither the statute nor prior Commission decisions provided much guidance. AT&T Illinois argued that, if this was a novel issue for the Commission just a year ago, the General Assembly could not have intended that untimed usage be excluded from network access line imputation tests in 1992, or codified that approach when Article XIII was revisited in 2001. Given the ambiguity inherent in the identity of the “test” from which untimed calling is to be excluded, AT&T Illinois contended that its analysis of the history and purpose of Section 13-505.1 was appropriate. AT&T Illinois further stated that its analysis did not ignore the plain meaning of the statute in favor of what AT&T Illinois wanted it to mean, but rather looked at what the General Assembly wanted it to mean.
AT&T Illinois further contended that inclusion of Bands A and B revenues is consistent with the Commission’s view in Docket No. 04-0461 that local calling is properly associated with a network access line and should be included in determining whether a network access line passes imputation. AT&T Illinois further noted that the Commission recognized in that case the distinction between including multiple services in the network access line test and separate requirements for service-specific imputation tests under Section 13-505.1. Order in Docket No. 04-0461, at 63. In other words, AT&T Illinois argued, whether or not a service is itself subject to imputation says nothing about whether it should be included in network access line imputation analysis, noting that switched access revenues and costs are included in the business network access line imputation test even though switched access service is not subject to an imputation test itself on a stand-alone basis.

2. Central Office Features

AT&T Illinois contends that central office feature revenues should be included in the imputation test for residence network access lines. AT&T Illinois pointed out that the Commission concluded in Docket No. 04-0461 that the proper scope of an imputation test is determined on a case-by-case basis, taking into account the “logic, law and realities of the situation.” Order in Docket No. 04-0461, supra at 62. In Docket No. 04-0461, AT&T Illinois acknowledged that the Commission concluded that central office features should not be included in the business network access line analysis because they were optional services, and business customers did not uniformly subscribe to them. However, according to AT&T Illinois, the “logic, law, and realities of the situation” relative to residence network access lines support the inclusion of central office feature revenues.

First, AT&T Illinois contended that central office feature revenues have historically played a much larger role in this Commission’s pricing policies for residence network access lines than business lines, because residence lines have always been priced much closer to cost than business lines. Since residence network access lines make less of a contribution toward covering AT&T Illinois’ overall costs of operation, higher central office feature and calling rates have made up the difference. For example, AT&T Illinois pointed out that over 28% of residence local exchange revenues are generated by central office features, as compared to only 9% of business local exchange revenues. Stated another way, AT&T Illinois argued that, if the Commission were to limit the definition of the “service” to the network access line, Bands A and B local usage and switched access charges in this proceeding as it did in Docket No. 04-0461, it would place a revenue production expectation on residence lines that is at odds with past regulatory policies.

Second, AT&T Illinois pointed out that central office features are more essential to residence customers than to business customers. In fact, according to AT&T Illinois, 70% of residence stand-alone customers and 100% of residence packages customers subscribe to one or more features, while less than 20% of business customers subscribe to any features whatsoever.
Third, AT&T Illinois disputed Staff’s assertion that exclusion of central office features was necessary to insure that AT&T’s prices for competitive services were pro-competitive. AT&T Illinois pointed out that the vast majority of the CLECs’ residence offerings include the network access line, local usage and central office features. Therefore, according to AT&T Illinois, including central office feature revenues in the imputation analysis does not disadvantage CLECs. Moreover, AT&T Illinois argued that the UNE-P product used as the basis for CLEC imputed costs in the imputation test provides CLECs with all central office features at no additional cost. AT&T Illinois contended that, given the large percentage of residence customers who subscribe to at least one feature, exclusion of features from the revenue side of the revenue-versus-cost imputation comparison for residence lines represents a much more serious and unfair exclusion than did the exclusion of feature revenues from the business network access line imputation test and creates a more extreme “apples-to-oranges” comparison situation that the Commission has already found should be avoided to the extent reasonable. Order in Docket No. 04-0461, supra, at 61-62. AT&T Illinois further pointed out that imputation is not the only weapon in the Commission’s arsenal that can be used to make carrier rates more competition-friendly. There are other ways to implement pro-competitive regulatory policies that allow a measured response to perceived competitive problems.

Fourth, AT&T Illinois argued that Staff’s approach would result in the discriminatory treatment of residence customers who subscribe to stand-alone residence services as compared to packages, because Staff takes the position that it would be proper to include feature revenues in an imputation test where AT&T Illinois offers them as part of a bundled service package. AT&T Illinois pointed out that two identically situated residence customers (one buying features as stand-alone services and one buying features in a package) would be treated entirely differently under Staff’s imputation approach – one would see rate increases and the other would not.

Finally, AT&T Illinois pointed out that Staff’s approach to imputation makes any transition plan almost impossible to implement. If the Commission were to adopt Staff’s version of imputation, AT&T Illinois would have to increase the rates for all stand-alone residence network access lines by $3.22 in Access Area B and $2.26 in Access Area C (including the lines included in the Local Saver Pack 30 and the Residential Saver Pack Unlimited packages) immediately upon conclusion of this docket. AT&T Illinois explained that these rate changes would largely destroy the carefully crafted safe harbor provisions and stand-alone network access line rate increase limits in the Joint Proposal.

B. Staff’s Position

1. Application Of Imputation Requirements

In Staff’s view, the plain terms of Section 13-505.1 of the PUA require imputation tests in this proceeding for residence NALs, ISDN, and bundled package offerings. Staff believes the Commission must determine whether a price squeeze exists in the markets for the services newly declared competitive by AT&T, as explicitly recognized by the General Assembly in Section 13-502(d). 220 ILCS 5/13-502(d). In Staff’s view, the Public Utilities Act is
unambiguous - if a service is classified as competitive, it is subject to the imputation requirement. 220 ILCS 5/13-502(d); 13-505.1. Upon submission of a competitive reclassification filing, the carrier involved must provide an imputation test. The results of any such test are an important tool in determining whether the Commission should investigate the competitive reclassification. Staff argues that waiting until after a competitive reclassification proceeding has been completed to examine these issues would allow anticompetitive practices, where they may exist, to be extended unnecessarily.

While no party takes exception to Staff’s position that competitive services are subject to the imputation requirement, Attorney General witness Lee L. Selwyn argues that the imputation test should be examined if and only if the Commission makes a determination that the competitive reclassification is appropriate.[14] Staff responds that this position is not supported by the statute, and that such an interpretation has a potentially negative impact on the state of competition if it is found that a price squeeze exists in the market for a particular service offering. The AG, however, points out in its Reply Brief that Section 13-502(d) requires a demonstration that the reclassified services exceed the long-run service incremental cost of providing the service, but it does not contain an imputation requirement. Nevertheless, the AG agrees that if a service does not pass imputation, it is compelling evidence that competition cannot be expected to constrain prices for that service.

2. Proper Form of the Imputation Test

In advancing its position regarding the proper form of the imputation test, Staff draws upon the Commission’s Imputation Order as significant precedent. According to Staff, the Commission there determined that, for purposes of an imputation test applicable to the business NALs, AT&T Illinois shall include the following: “Band A and Band B usage and switched access belong in the test. On the other hand, for Band C and other toll services, customers may freely elect other providers.” Order at 85, Illinois Bell Telephone Company: Petition Regarding Compliance with the Requirements of Section 13-505.1 of the Public Utilities Act, ICC Docket No. 04-0461 (June 7, 2005)(hereafter “Imputation Order”). Additionally, as noted by Staff, the Commission specifically determined that AT&T Illinois could not include revenues from vertical services, stating that:

As for [vertical] features, customers may elect to take none, one, or a multitude of features, once a line is installed, or at any time after their line is installed. As such, these [vertical] services are not proper for inclusion in this primary test.

Id.

It is Staff’s opinion that the imputation test for residence NALs should conform, to the extent possible, to that for business NALs. However, Staff contends that Section 13-505.1 of the PUA contains additional language that impacts the residence NAL test. Specifically, Staff refers to the passage which states that: “[t]he portion of a service consisting of residence
untimed calls shall be excluded from the imputation test.” Id. (emphasis added). Because Band A and Band B usage are both untimed calls, the residence NAL must, according to Staff, depart from the test adopted by the Commission in that revenues and costs associated with local usage must be omitted.

Staff asserts that the proper imputation test for the residence NAL that complies with both the Commission’s Imputation Order and Section 13-505.1, is as follows:

<table>
<thead>
<tr>
<th>Imputation Test- Residence NAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
</tr>
<tr>
<td>Access Line</td>
</tr>
<tr>
<td>EUCL – Multiline</td>
</tr>
<tr>
<td>Switched Access</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

Staff Ex. 3.0 at 11

In Staff’s view, the above test must be performed separately in Access Areas A, B, and C because the rate and cost structure vary between them. Additionally, Staff believes that an imputation test must be performed for AT&T winback offerings that waive nonrecurring charges, bundled service packages, and ISDN services. The winback imputation test is identical to residence NAL test, in Staff’s view, with the one exception being that nonrecurring costs be included on the cost side of the test. Staff argues that the test for residence ISDN service follows the same reasoning as the test for residence NALs, but differs slightly due to the nature of the offering. Staff provides the following table, which it asserts details the form of that test:

<table>
<thead>
<tr>
<th>Imputation Test- Residence ISDN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
</tr>
<tr>
<td>EUCL – Multiline</td>
</tr>
<tr>
<td>EUCLP</td>
</tr>
<tr>
<td>C. O. Termination</td>
</tr>
<tr>
<td>Circuit Switched Capability</td>
</tr>
<tr>
<td>Switched Access</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

According to Staff, AT&T’s bundled packages all have different characteristics and therefore have unique tests. Staff argues that, similar to residence NAL and ISDN tests, untimed local usage must not be included in the test. However, Staff notes, the majority of AT&T’s packages include vertical services and/or Band C usage as part of the monthly rate. As such, the tests for these offering, according to Staff, must include revenue for these included services.
Staff states that the results of its imputation tests are problematic. According to Staff’s calculations, residence NALs fail imputation in Access Areas B and C, and Winback NALs fail imputation in all access areas. Staff asserts that all ISDN services pass imputation and that bundled packages pass in nearly all instances -- the exceptions being, according to Staff, 2 line uSelect 3 (fails in all three access areas) and 2 line uSelect 6 (fails in Access Areas B and C). Staff notes that a detailed summary of the required imputation tests in this proceeding is contained in Exhibit 2 to Staff Exhibit 3.0.

Staff identifies several exceptions that AT&T Illinois takes with respect to Staff’s proposed tests including: the company’s assertions that the Commission should include vertical services in the residence NAL imputation test (which is based on the notions that: (1) vertical services should be included in the residence NAL imputation test because such services “contribute” greater revenue to the recovery of AT&T Illinois’ overall costs than is the case with the business NAL; (2) more residence customers subscribe to vertical features than business customers; and (3) AT&T Illinois’ competitors compete with AT&T Illinois to provide vertical services, so that inclusion is proper.) Staff argues these reasons do not give the Commission any plausible basis to depart from its decision in the Imputation Order not to include vertical services. Staff argues that Commission was clear on its basis for declining to include vertical services when it stated:

Customers may elect to take none, one, or a multitude of features, once a line is installed, or at any time after their line is installed. As such, these [vertical] services are not proper for inclusion in this primary test. Imputation Order at 83

Staff points to the fact that AT&T itself notes that 30% of its stand alone residential NAL customers subscribe to no features, while a further 32% subscribe to only one; a further 20% take two. AT&T Ex. 5.1 at 13. Accordingly, Staff argues, the soundness of the Commission’s reasoning in the Imputation Order is absolutely borne out by the facts in this case. NAL customers can – but need not – subscribe to vertical services at any time, and the inclusion of these revenues in the imputation test is, in Staff’s view, improper. Vertical services are simply not, Staff argues, basic or essential offerings for customers, whether residential or business.

Staff also notes that AT&T takes exception to Staff’s view that Band A and Band B usage should not be included in residence imputation tests. Staff notes that AT&T argues that the statutory prohibition against the inclusion of “residence untimed calls” in imputation tests, 220 ILCS 5/13-505.1(a) is a historic relic that the Commission is not bound to enforce in this instance, that AT&T Illinois’ position is that the imputation statute was enacted in a period when the statutory terms “competitive services”, “untimed residence calls”, and “switched interexchange service” meant something other than they do now, and that AT&T suggests that this means that the General Assembly never meant to exclude Band A and B calls from imputation. In Staff’s view, the Commission cannot accept AT&T’s position, for the
following reasons.

Section 13-505.1(a) is unambiguous when it states that, “[a] telecommunications carrier shall satisfy an imputation test for each of its own competitive services, switched interexchange services, or interexchange private line services, that utilize the same or functionally equivalent noncompetitive services or noncompetitive service elements.” 220 ILCS 5/13-505.1(a) (emphasis added). The same subsection provides that: “[t]he portion of a service consisting of residence untimed calls shall be excluded from the imputation test.” Id. (emphasis added).

Staff believes that its position is supported by precedent and provides several citations to support its assertions. The primary rule of statutory construction, as Staff argues, is to give effect to legislative intent by first looking at the plain meaning of the language. Davis v. Toshiba Machine Co., 186 Ill. 2d 181, 184-5; 710 N.E.2d 399, 401; 1999 Ill. Lexis 24 at 4-5; 237 Ill. Dec. 769 (1998). Staff further argues that if the statutory language is clear and unambiguous, it must be given effect as written, and no exceptions, limitations or conditions that the legislature did not express may be included. A court, according to Staff, must construe a statute as it is, and may not supply omissions, remedy defects, or add exceptions and limitations to the statute’s application, regardless of its opinion regarding the desirability of the results of the statute’s operation. Toys “R” Us v. Adelman, 215 Ill. App. 3d 561, 568; 574 N.E. 2d 1328, 1332; 1991 Ill. App. Lexis 1133 at 12-13; 158 Ill. Dec. 935 (3rd Dist. 1991); cf. Thornton v. Mono Mfg. Co., 99 Ill. App. 3d 722, 729; 425 N.E.2d 522, 527; 1981 Ill. App. Lexis 3216 at 15; 54 Ill. Dec. 657 (2nd Dist. 1981) (in determining that application of statute of limitations barring minor’s products liability claim was proper, if perhaps harsh, court observed that, where statute is clear, only legitimate role of court is to enforce the statute as enacted by legislature); People ex rel. Racing Bd. v. Blackhawk Racing, 78 Ill. App. 3d 260, 264; 397 N.E.2d 134, 136; 1979 Ill. App. Lexis 3537 at 8; 33 Ill. Dec. 801 (1st Dist. 1979) (court observed that, though the General Assembly could have enacted a statute more effective in accomplishing its purpose than the one it did enact, the court was not permitted to rewrite the statute to remedy this defect).

Staff thus believes that AT&T’s position is untenable from a legal perspective. Staff argues that the statute’s clarity is not in doubt and its wisdom not subject to attack and further that even assuming that there might have otherwise been some factual merit in AT&T’s assertions, the General Assembly has had several opportunities to make good the alleged “deficiencies” in the statute, without doing so – even while amending Section 13-502. Staff thus concludes that AT&T’s argument cannot be taken seriously, and local untimed calls must be excluded from imputation tests, as a matter of law.

Moreover, on a practical basis, Staff asserts that the imputation test exists to insure that AT&T’s prices for competitive services, at their most basic level, are not set at a level too low for its competitors to effectively operate. Staff Ex. 3.0 at 18. As the Staff has purported to demonstrate, competitors are currently not offering local measured service
precisely because AT&T Illinois’ rates for the residence NAL are currently too low to permit competitors to make money – in other words, because they do not pass imputation. Permitting AT&T Illinois to avoid the results, in Staff’s opinion, of imputation will effectively prevent competitors from operating and competing for this service.

3. Effect of Joint proposal on Imputation Tests

The Joint Proposal affects several of Staff’s imputation tests. Staff provided a table in its Initial Brief that details the results of the affected tests. See Staff IB at 102. In the first year of the Joint Proposal, no changes to the residence NAL and winback NAL tests occur, as rate changes for these services do not start until the second year of the proposal. However, as Staff indicates, rate increases for these services will affect their respective imputation tests over time under the Joint Proposal. Staff provided tests for these offerings assuming that the maximum rate increases of $3 per NAL occur under the Joint Proposal. Staff shows that the impact on imputation of these maximum increases is that Residence NALs in Access Area C and Winback NALs in Access Area A would no longer fail imputation.

While Saver Pack 30 and Saver Pack Unlimited do not currently require unique imputation tests, the new Safe Harbor Saver Pack 30 and Saver Pack Unlimited offerings recommended in the Joint Proposal do require unique tests in Staff’s view. The current Saver Pack 30 and Saver Pack Unlimited offerings are exclusively usage services, and do not include the NAL. Because residence untimed local usage are not properly included in imputation studies, these services do not require tests. However, the Safe Harbor incarnation of these offerings includes the NAL and the usage in the same offering. Therefore, Staff opines that the services are subject to imputation (minus the untimed local usage portion of the service, which, as noted above, cannot be included). The other Safe Harbor offering recommended by the Joint Proposal, the Flat Rate package, also requires an updated imputation test in Staff’s opinion, as the rates for this package are lowered in the proposal. According to Staff’s calculations, the Safe Harbor rates for Saver Pack 30 and Saver Pack Unlimited fail imputation in Access Areas B and C, while the Safe Harbor Flat Rate package passes in all instances.

Staff indicates that no other imputation tests are affected by the Joint Proposal. While the rate increases allowed for in the Joint Proposal lessen the imputation concerns in this proceeding, those concerns undoubtedly still exist.

Outside of those general issues regarding the proper form of the test, no party stated concerns with any of the modifications to tests proposed by Staff as a result of the Joint Proposal. The only concerns specific to the Joint Proposal tests provided by Staff were not of a technical nature, but rather a matter of policy. Consistent with the arguments made concerning imputation tests generally, Attorney General witness Dr. Selwyn espouses the theory that imputation concerns “put the cart before the horse” in a proceeding that addresses whether AT&T Illinois services are subject to competition. AG Ex. 1.1 at 18.
However, Staff claims that Dr. Selwyn’s recommendations regarding imputation, quite apart from their inconsistency with Section 13-502(d) - which requires imputation studies with any competitive filing, see 220 ILCS 5/13-502(d) - are indicative of the differences between how he and Staff advise the Commission to make its determination in this proceeding. As the AG pointed out in its Reply Brief at 25, however, Section 13-502(d) does not mention imputation, although it does require a long-run service incremental cost study.

In the face of evidence that the current alternative regulation plan results, with respect to numerous AT&T Illinois residential services, in price squeezes vis-à-vis imputed costs, Dr. Selwyn recommends the Commission simply reclassify services as non-competitive. Staff believes that, while this approach might avoid the application of the Section 13-502(d) imputation requirement, it does not address the problems that imputation requirements are designed to remedy.

Staff posits that its imputation analysis provides evidence that AT&T Illinois’ ability to assert market power cannot properly be gauged in the context of current rates and a market power analyses based upon a comparison of competitors’ rates to those of AT&T Illinois is flawed. Thus, imputation tests provide information that is essential to understanding the state of competition in the measured service market and Staff’s imputation concerns do not, as Dr. Selwyn suggests, put the cart before the horse. Rather, Staff’s analysis properly includes imputation analyses as a critical ingredient to a determination of assessing market competitiveness. If the Commission accepts Dr. Selwyn’s approach - an approach that would perpetuate, through regulation, any current price squeezes – then Staff believes that it will impede, and perhaps actually prevent, competition in these markets. Staff considers this approach to be at odds with both the reclassification provisions of Section 13-502, in particular Section13-502(c)(5), and the general policies expressed by the General Assembly for regulation of telecommunications. 220 ILCS 5/13-102(g); 13-103(b).

C. Commission Discussion and Analysis

Three fundamental issues regarding imputation potentially require resolution in this proceeding. First is the question of whether imputation requirements apply to the services whose competitive reclassification is under consideration.[15] Second, assuming we find that imputation requirements apply, is the appropriate form of an imputation test for each service under consideration. Finally, again provided imputation requirements apply, the results of any tests, properly formulated, must be analyzed, and any test failures addressed.

We agree with Staff that the imputation standard and requirements of the PUA apply to the competitively reclassified services at issue in this proceeding. We agree this is required not only by the plain language of Section 13-502(d) of the PUA (220 ILCS 5/13-502(d)), but that application of imputation requirements as advocated by Staff is consistent with the language and intent of PUA Section 13-505.1 in its entirety. This leads directly to
issues concerning the appropriate formulation and application of imputation tests to the reclassified services. As AT&T pointed out, the Commission’s practice should be, and is, to address every imputation test on a case-by-case basis taking full account of all relevant circumstances. We do so in this proceeding.

Central Office Features

As a general matter, we find there must be persuasive reasons to depart from the fundamental principles and findings set forth in our recent Imputation Order in the instant case involving residence services. The Commission is of the opinion that residence and business network access lines have different pricing histories and that business and consumer buying patterns are distinct. Therefore, a fresh look at the revenue streams that should be included in a residence imputation test is appropriate. AT&T Illinois explains that central office features revenues have always supported residence network access line prices more than they have business network access line prices and that the vast majority of residence customers buy one or more features. Under these circumstances, the Commission concludes that, even though features are optional services, they should be included in the imputation test for residence network access lines.

Local Usage Revenues

The Commission is also of the opinion that Staff’s interpretation of the exemption for untimed local calling in Section 13-501.1 should not be adopted. There is apparently no dispute between the parties that this exemption was intended in 1992 to protect residence customers from potential rate increases from the new imputation requirement. The General Assembly adopted this provision when it imposed imputation requirements on “switched interexchange services” for the first time. Subjecting the broad category of “switched interexchange services” to imputation in 1992 carried with it a risk of rate increases for residence customers because some “interexchange” calling routes were being billed as local untimed calls at low rates. This is the “imputation test” from which untimed calls were being exempted.

However, the Commission found in 2005 that imputation tests for network access lines present novel issues which the General Assembly did not anticipate in 1992. The Commission approved consideration of local calling revenues/costs in Docket No. 04-0461 in the imputation test for business network access lines and all parties agree that, from a policy perspective, it should be included in the residence test as well. To give full effect to the General Assembly’s policy objectives and to permit development of an imputation test for residence network access lines that reflect the relevant costs and revenue streams associated with it, the Commission concludes that the exemption language in Section 13-505.1 was not intended to and does not preclude consideration of untimed calling revenues and costs in a residence network access line imputation analysis. Therefore, untimed local calling will be included in the test.
Imputation Test Results

Based on the foregoing rulings, all of AT&T Illinois' residence local exchange services, including network access lines, pass an imputation test and no rate changes are required.

IX. FINDINGS AND ORDERING PARAGRAPHS

The Commission, being fully advised in the premises, is of the opinion and finds that:

(1) Illinois Bell Telephone Company ("AT&T Illinois") 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 (the "Act");

(2) the Commission has jurisdiction over the parties and the subject matter of this proceeding pursuant to the Act;

(3) the recitals of facts and law and conclusions reached in the prefatory portion of this Order are supported by the evidence in the record, and are hereby adopted as findings of fact and law;

(4) for those residential services classified by AT&T Illinois as competitive in its November 10, 2005 tariff filing, that are identified in Appendix A of this Order, the same services, their functional equivalent, or substitute services are reasonably available to residential customers in the Chicago LATA from more than one provider;

(5) based on Finding (4), above, and taking into consideration all of the factors identified in Sections 13-502(c)(1)-(5) of the Act, those residential services classified by AT&T Illinois as competitive in its November 10, 2005 tariff filing, which are listed in Appendix A, are properly classified as competitive under Section 13-502(b) of the Act;

(6) The Section 13-518 residential service packages, listed in Appendix B attached to this order, are defined by statute as non-competitive;

(7) AT&T Illinois' voluntary commitments in the Joint Proposal are adopted as conditions to the approval of the competitive classification;

(8) AT&T's Illinois' residence local exchange services, including network access lines, meet the requirements of Section 13-505.1 of the Act, as specified in this Order. AT&T Illinois is directed to file, within 45 days of entry of this order, imputation calculations that comply with the findings of this order.

IT IS THEREFORE ORDERED that those residential services classified by AT&T
Illinois specifically listed on Appendix A attached hereto shall remain classified as competitive.

IT IS FURTHER ORDERED that AT&T Illinois shall file, within 45 days of entry of this order, tariffs classifying those services set forth in Appendix B hereto as non-competitive.

IT IS FURTHER ORDERED that AT&T Illinois submit the new names of the three safe harbor packages specified in the Joint Proposal for Commission review.

IT IS FURTHER ORDERED that AT&T Illinois include Commission Staff when designing the seven customer bill messages and inserts, as specified in the Joint Proposal. In addition, the first of such bill messages or inserts shall be included within the first three billing cycles after the entry of this order.

IT IS FURTHER ORDERED that AT&T file a semi-annual report, with information on subscribership as of June 30 and December 31, that contains the number of customers subscribing to each of its services in MSA-1, including the three safe harbor packages. Such filing shall be made with the Chief Clerk.

IT IS FURTHER ORDERED that AT&T Illinois allow online ordering of stand alone network access line and local usage services as well as the Section 13-518 and the safe harbor packages on its website and to do so in a manner similar to the ordering of its other residential services.

IT IS FURTHER ORDERED that any increase of the network access line rate for measured service customers in year 3 after the entry of this Order shall not exceed $2, and similarly, that any increase of the network access line rate for measured service customers in year 4 after the entry of this Order shall not exceed $2.

IT IS FURTHER ORDERED that AT&T is directed to undertake a statistically-valid survey of its existing measured service customers to determine their demographic and usage characteristics. The results of the survey should be reported to the Commission within six months of the entry of this Order. Such report shall be filed with the Chief Clerk.

IT IS FURTHER ORDERED that AT&T is directed to file an annual report, beginning with information as of December 31, 2006, that includes, at a minimum, updated versions of schedules WKW-5 and WKW-9, which were attached to AT&T Exhibit 1.0 in this Docket. Such report shall be filed with the Chief Clerk.

IT IS FURTHER ORDERED that any objections, motions or petitions not previously disposed of are hereby disposed of consistent with this Order.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Act and 83 Ill.
Admin. Code 200-880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 30th day of August, 2006.

(SIGNED) CHARLES E. BOX

Chairman
APPENDIX A

BASICS Choice;
uSelect 3, 2-Line uSelect 3;
uSelect 3 Win/Winback Plan;
uSelect 6 and 2-Line uSelect 6;
uSelect Standard Package;
Residence Call Plans;
Ameritech Home Service Packages;
Complete Solution II;
The BASICS Package;
The Works;
Sensible Local Solution;
2-Line Complete Local Solution;
Complete Local Solution Package;
Economy Local Solution Package;
Economy Solution Package;
Economy Solution Plus Package;
Sensible Solution Package;
Sensible Solution Plus Package;
Residential ISDN Direct Service;
Residence Network Access Lines and the Winback Residence Access Line Offer;
Residence Usage Services including Bands A and B Local Usage, ,
Call Waiting, Caller ID, Caller ID with Name and Talking Call Waiting;
Directory Listing Services including Additional Directory Listings, Private Directory Listings, Semi-
Private Directory Listings and Custom Number Service;
Billing Services including the Non-sufficient Check Charge and Minutes of Use Printed Detail Report;
APPENDIX B

Flat Rate Package;
Enhanced Flat Rate package;
Residence Saver Pack Unlimited

[1] AARP Illinois sought, and was granted, intervention at a later date.
[3] AT&T Ill. Init. Br. at 48-49 (quoting Verizon New York Order, at 34-35); Final Decision, Petition of SBC Wisconsin for Suspension of Wisconsin Statute sec. 196.196(1) With Regard to Basic Local Exchange Service, No. 6720-TI-196 (Pub. Serv. Comm’n of Wisc., Nov. 25, 2005) at 26 (“VoIP is in its very earliest stages, but represents a new service that functionally competes with BLES. . . . [T]he Commission concludes that VoIP, to a small degree at this point, is a reasonable technical substitute for BLES, and will grow as a form of competition to BLES in the foreseeable near term.”); Order No. 508813, Application of Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma, for the Classification of Intrastate Retail Telecommunications Services as Basket 4 Services Pursuant to OAC 165:55-66(4), Cause No. PUD 200500042 (Corp. Comm’n of Okla., July 28, 2005), at 40 (“VoIP providers can be and are being used interchangeably as substitutes for” retail local exchange service and “thus provide a competitive constraint” on retail local service’s pricing); Iowa Code § 476.1D(1)“b” (mandating consideration of VoIP in deciding whether a service is subject to effective competition).
[5] Comparison of Data Net Systems regulated UNE-P facilities cost as found in Data Net Systems Ex. 2.0 (Segal), p. 13, with the rate charged by Illinois Bell for the unregulated UNE-P (LWC).
[6] See Data Net Systems Ex. 2.0 (Segal), p.13, and Data Net Systems Ex. 2.2 (Segal) in comparison with Illinois Bell’s LWC.
[7] This practice was the subject of a past alternative regulation annual review, where the Commission determined that, in order to prevent AT&T from manipulating the alternative regulation plan so as to gut its intent to benefit customers, the Company could not apply price reductions of more than the change in the price cap index (“PCI”) to grandfathered services in any year.
[8] Purchasers of service packages generally will compare the price of a competitor’s bundle of local and long distance services with the price of a comparable AT&T package.
[13] Zolnierek cited to “IBT Response to Staff Data Request JZ 3.01.”; footnote 17, ICC Staff Ex. 2.0 at 13 (Zolnierek).

[15] As a result of the submission of the Joint Proposal, this determination potentially includes all services proposed or contained therein.