This proceeding began on November 9, 2006, when AT&T Illinois filed a Statement in Compliance with the Order in Docket 06-0269. To understand the nature of the filing at hand, it is necessary to consider from where and how it evolved.

Background and Procedures

On October 11, 1994, and pursuant to Section 13-506.1 of the Public Utilities Act ("Act"), the Illinois Commerce Commission ("Commission") established an alternative form of regulation for the noncompetitive services of Illinois Bell Telephone Company ("AT&T Illinois" or "the Company"). Order, Dockets 92-0448/93-0239 (Consol.) ("Alt Reg Order"). Under the terms of the alternative regulation plan ("Alt Reg Plan") that it adopted, rates for noncompetitive services are tied to an inflation and productivity-based index. Annually, AT&T Illinois is required to make a filing that, inter alia, sets out for Commission approval, a Price Cap Index ("PCI") to be effective on July 1st of the same year.

The instant proceeding grows out of the 2006 Annual Filing that was addressed in Docket 06-0269. Order, Docket 06-0269 (June 28, 2006). Because most of AT&T Illinois’ residential services in MSA-1 were reclassified as competitive on November 11, 2005, these were excluded from the 2006 Annual Filing. This reclassification, however, was the subject of a disputed and still unresolved proceeding before the Commission in Docket 06-0027. As a result of the pendency of the issues, the Commission approved AT&T Illinois’ 2006 Annual Filing subject to the outcome of Docket 06-0027. It stated that:
in the event that the final order in Docket 06-0027 reclassifies any services to a non-competitive status, AT&T Illinois should recalculate and re-submit its 2006 annual filing, within 30 days of the date of the Commission’s order finally disposing of any applications for rehearing or within 30 days of the expiration of the period in which applications for rehearing may be filed, if none are filed; or, it will make a show cause filing that details and analyzes why such an updated 2006 annual filing is not necessary. Order at 19, Docket 06-0269 (June 28, 2006).

On August 30, 2006, and in its final Order for Docket 06-0027, the Commission approved the competitive classification for all of AT&T Illinois’ residential services in MSA-1 with the exception of three “legislative packages” that Section 13-518 of the Act requires AT&T Illinois to offer. Order, at 100-110, Docket 06-0027 (“Competitive Classification Order”), (August 30, 2006). The Competitive Classification Order required that these services be reclassified as noncompetitive within 45 days of the date of that Order. Id. at 122. The Order also approved a Joint Proposal presented by AT&T Illinois and CUB. Under the terms of the Joint Proposal and to provide residential customers with rate alternatives that are protected from price increases, three existing packages were designated "safe harbors" (two of which were also "legislative packages") and their rates were decreased in November and frozen for a four-year period. Id. at 67, 76-77. Also, AT&T Illinois allowed CUB to rename the safe harbor packages. Id. at 67, 76.

On November 9, 2006, AT&T Illinois filed a Statement in Compliance with the Order in Docket 06-0269. There were Petitions to Intervene in this proceeding filed on behalf of the People of the State of Illinois ("AG") and the Citizens Utility Board ("CUB"). Each was granted. The Staff of the Commission ("Staff") also took an active role in this proceeding.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, hearings were held before duly authorized Administrative Law Judges ("ALJs") of the Commission at its offices in Chicago, Illinois on December 5, 2006, January 10, 2007, and March 13, 2007. The ALJs established a schedule for discovery and the filing of initial and reply comments. Initial Comments were filed by the AG and Staff of the Commission on February 20, 2007. Replies to the Initial Comments were filed on February 27, 2007 by AT&T Illinois, Staff, and the AG. The record was marked “Heard and Taken” on March 13, 2007.

The ALJs’ Proposed Order was served on April 18, 2007. Briefs on Exceptions were filed April 25, 2007 by Staff and the AG. On May 2, 2007, Staff and AT&T Illinois filed Replies to Exceptions.
Regulatory Requirements

The alternative form of regulation ties rates for noncompetitive services to an index and, thereby, supplants typical rate case procedures with a more streamlined process by which price changes can be approved. This process consists of an annual filing made by the Company and requires subsequent approval by the Commission of the proposed price cap index ("PCI"), to be effective on July 1 of the year of the filing. At the outset of the Plan, the PCI was set equal to 100. Pursuant to Commission Order, the PCI must be recalculated once each year according to the following formula:

\[ \text{PCI}_t = \text{PCI}_{t-1} \left[ 1 + \left( \frac{\text{change in GDPPI}}{100} - .043 \right) + z + q \right] \]

where:

- \( \text{PCI}_t \) = price cap index for current year,
- \( \text{PCI}_{t-1} \) = price cap index for previous year,
- GDPPI = Gross Domestic Product Price Index ("GDPPI"),
- Z = exogenous change factor, and
- Q = quality of service component, which is negative.

Additionally, under terms of the Alt Reg Order, most of AT&T Illinois’ noncompetitive services were separated and placed into four distinct customer groups or service baskets. These were designated as follows: 1) Residential Basket, 2) Business Basket, 3) Carrier Access Basket, and 4) Other Services Basket. The prices for the services within each of these baskets are allowed to fluctuate over time, although each basket’s Actual Price Index ("API") should never exceed the PCI.

Similar to the PCI, the API of each of the service baskets was set equal to 100 at the outset of the plan. Each basket’s API reflects the basket’s average price, with demand and any proposed tariff changes properly accounted for. The API may change at any time during the year when price changes are made. Alt Reg Order, Appendix A at 3. The API for an individual basket is calculated as follows:

\[ \text{API}_t = \sum \text{API}_{t-1} \times \text{API}(t) \]

where:

- \( \text{API}_t \) = actual price index for the current year,
As described in the Alt Reg Order, "the reasonableness of price changes under the plan is determined by a comparison of the PCI applicable to a given year and the API for each of the four customer categories." Alt Reg Order, Appendix A at 3. Specifically, each basket’s API must be less than or equal to the PCI at all times. This requirement has implicitly placed the emphasis of the Company’s annual filings on the calculation of the PCI and the justification of each of its inputs. In addition to determining whether the baskets’ APIs are less than the PCI, the Commission must also ensure that any proposed tariff changes are consistent with the requirements of the Act, including Sections 13-505.1 and 13-507. 220 ILCS 5/13-505.1; 5/13-507.
Directives for the Annual Filing

In order to develop a record that can be used to determine whether it should approve the Company’s annual rate filings, with or without modifications, the Commission established a very specific set of filing requirements. In its Alt Reg Order, the Commission stated that:

Illinois Bell shall be required to make an annual rate filing no later than April 1 of each year of the plan after 1994. At that time, Illinois Bell shall provide the following information:

(a) the price cap index for the following 12-month period (July to June), with supporting data showing the GDPPI for the previous calendar year and the percent GDPPI change for that 12-month period;

(b) the actual price index ("API") for each service basket, including the effects of proposed rate changes under the price cap index for the following 12-month period (July to June) and adjustments for new services added, existing services withdrawn, and services reclassified as competitive or noncompetitive;

(c) tariff pages to reflect revised rates;

(d) supporting documentation demonstrating that any proposed rate changes are consistent with the requirements of the price index mechanism;

(e) a demonstration that Illinois Bell would be in compliance with Sections 13-507 and 13-505.1 of the Act if the proposed rate changes went into effect;

(f) an identification of any changes to the GDPPI weights and an assessment of the effects of such changes, and any necessary modifications to the PCI;
(g) the current data showing the calculation of Z for the previous calendar year, with the effects causing Z to change identified and described;

h) the current data showing the calculation of Q for the previous calendar year, with the events causing Q to change identified and described. Alt Reg Order at 92.

Furthermore, the Commission stated that its Staff, and “all of the interested parties will have an opportunity to file written comments in response to each annual filing” and AT&T Illinois will have “an opportunity to file reply comments.” Id. at 93.

Modifications to the Plan

On December 30, 2002, the Commission entered its Final Order in Docket 98-0252/98-0335/00-0764 (Consol.) (“Alt Reg Review Order”), which established certain modifications to the alternative regulation plan of the Company.

At the outset, the Price Cap Index was modified as follows: 1) Measure of Inflation - the Commission ordered that the measure of inflation to be used in the price cap index be changed from the fixed-weight GDPPI to the chain weighted GDPPI, Alt Reg Review Order at 84; 2) Productivity ("X") Factor - the Commission ordered that the X factor should be set at 4.3% on a going forward basis, id., at 88-89; 3) Exogenous Change ("Z") Factor - the Commission ordered that no changes were necessary to the Z factor, nor was any clarification necessary as to its use on an annual basis by the Commission, id., at 91-92; 4) Service Quality ("Q") Factor - the Commission modified several aspects of the service quality benchmarks, and how they are measured within the alternative regulation plan. Id. at 149.

For purposes at hand, it is noted that the Commission ordered that the Q factor remain in the PCI calculation, and that the penalty for failure to achieve a benchmark would continue to be a .25 reduction in the PCI. Id. at 92. With respect to pricing flexibility, the Commission ordered no changes to the 2% upward pricing flexibility that was afforded to AT&T Illinois in the original Alt Reg Order. Id. at 94.

The Alt Reg Review Order also made several modifications to the basket structure. The changes were these:

• the Business basket was eliminated;
• a new basket, called the "Packages" basket, was introduced;
• the statutorily mandated Flat Rate and Enhanced Flat Rate offerings were placed in the Packages basket;

• the statutorily mandated Budget package was assigned to the Residential basket;

• the SimpliFive and CallPak residential calling plans were moved from the “Other” basket to the “Residential” basket.

Finally, with respect to the 2003 annual filing, the Commission ordered that the PCI and API of each basket be reinitialized to the value of 100. *Id.* at 107.

In November 2003, the Commission adopted revised administrative regulations concerning certain service quality measures. *Order*, Docket 00-0596 (November 5, 2003), revising 83 Ill. Adm. Code Part 730. These revisions to the rules took effect on December 1, 2003.

Notably, in its 2005 Annual Filing Order, the Commission established that the Q Factor should be calculated using the methodology set in Part 730. *Order* at 35, Docket 05-0231 (June 29, 2005). In addition, it concluded that the Part 730 calculation methodology should be employed for purposes of triggering the $30 million penalty for failure to comply with the OOS>24 benchmark. *Id.*

**AT&T Statement in Compliance**

AT&T Illinois’ Statement in this proceeding provides the impact of reclassifying the “legislative packages” as noncompetitive on the overall rate reductions required for the Plan year (July 2006 – June 2007). It demonstrates that the rate reductions for the noncompetitive “legislative” packages that have already been implemented in compliance with the Competitive Classification Order provide customers with rate benefits far beyond what the Alt Reg Plan would otherwise have required. The APIs for the relevant baskets are lower than their associated PCIs. Moreover, AT&T Illinois avers that retroactive refunds are not required for the period from July 1, 2006 through November 10, 2006, prior to the point that these rate changes went into effect, because the annual revenue effect of the Joint Proposal’s rate changes for the remainder of the Plan year (November 10, 2006 through June 30, 2007) substantially exceeds the annual revenue effect that would have been required for the entire July 1, 2006 through June 30, 2007 period.

**AG Letter**
On January 3, 2007, the AG submitted a letter to the Administrative Law Judges in this proceeding that indicates four issues to be addressed as follows:

(1) should the changed rates be implemented retroactively once the services are returned to non-competitive status;

(2) are the new rates in fact available to consumers and for what period of time have they been available;

(3) are the new rates available to all Illinois customers or only those in MSA 1; and

(4) should the rates be treated as “new rates” under the Plan.

**AG Initial Comments**

The AG notes that AT&T Illinois’ 2006 filing in Docket 06-0269 was limited to approximately 17% of the residential lines that were included in its 2005 filing, because AT&T Illinois had reclassified all residential service in MSA 1 as competitive. This reclassification action was reviewed in Docket 06-0027 where, the AG points out, the Commission ultimately reclassified three services as non-competitive. In that case too, the AG explains, AT&T Illinois offered to make price reductions for three safe harbor packages. Also, these services were renamed as follows: Flat Rate Package became Consumer’s Choice Plus, Residence Saver Pack Unlimited became Consumer’s Choice Extra and the Local Saver Pack 30 became Consumer’s Choice Basic.

AT&T Illinois’ filing in this Docket shows the reduction in prices represented by the Consumer’s Choice Packages in the Actual Price Index for 2006, to which the AG does not object. The AG avers, however that the rate changes that are incorporated into AT&T Illinois’ amended filing should be made retroactive to July 1, 2006.

According to the AG, customers lost four months of the price reductions as a result of the erroneous classification of certain packages as competitive. The AG contends that the Consumer’s Choice Rates should be made retroactive to July 1, 2006 in order to comply with the Alternative Regulation Plan and Section 13-502(e) of the PUA. Section 13-502(e) states, in relevant part, that:
In the event . . . 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. 220 ILCS 5/13-502(e).

The AG points out that the Alt Reg Plan has a July 1 effective date. As such, the AG argues, when the Commission directed that certain services be returned to the non-competitive classification at the rates proposed by AT&T Illinois in Docket 06-0027, AT&T Illinois was obligated to recalculate and re-submit its 2006 annual filing, and it was also supposed to be effective July 1, like all previous annual rate filings.

Responding to AT&T Illinois' assertion that the rate reductions substantially exceed the reduction required under the Alt Reg Plan, the AG argues that the size of the reduction is not relevant to the Plan's requirement that each year the API should not exceed the PCI. The AG maintains that even if the Company chooses to make rate reductions greater than those required by the plan, consumers should still be able to expect to receive the benefit of those reductions for the entire year in which they are included in the API. According to the AG, the API is not designed to account for partial year reductions, and in no prior proceeding has AT&T Illinois, or any other party, suggested that a rate should only apply for a portion of the period after July 1.

The AG argues that, if AT&T Illinois is permitted to make a partial year rate reduction, it will create a dangerous precedent as it will allow AT&T Illinois to manipulate the availability of rate changes in order to limit the benefits received by consumers and to limit the revenue reduction resulting from these lower rates. The AG asserts that consumers will have a lesser benefit here because AT&T Illinois misclassified certain services as competitive and the rate that AT&T Illinois has included in the API were not put in place until well after July 1. According to the AG, the terms as well as the goals of the Alt Reg Plan would require that the rate reductions included in the 2006 API be made retroactive to July 1, 2006. The AG believes that this conclusion is supported by Section 13-502(e) of the Act which gives the Commission 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." 220 ILCS 5/13-502(e). The AG argues that AT&T Illinois could have offered other rate reductions for 2006, but that by including the Consumer's Choice rates in its recalculated and re-submitted 2006 Annual Rate Filing, AT&T Illinois implicitly chose to make those rates effective as of July 1.
The AG also claims that the Commission should open an investigation to determine if civil penalties should be assessed against AT&T Illinois for delaying the implementation of the new rates approved in Docket 06-0027. Further, the AG contends that consumers were reportedly not able to obtain these services after they were tariffed or to order these services online, but were required to make a call to a customer service representative. The AG argues that these are violations of the Order in Docket 06-0027 and frustrate the purpose of the Alt Reg Plan, which is to ensure that consumers receive the benefit of reduced prices. At a minimum, the AG maintains that the Commission should order that consumers who have subscribed to these rates receive retroactive credit for AT&T Illinois’ failure to make the rates available on the terms mandated by the Alt Reg Plan and by the Commission’s Order in Docket 06-0027.

**Staff Initial Comments**

Staff opines that a recalculation of the alternative regulation plan was in order as a result of services deemed to be improperly classified as competitive by AT&T Illinois in Docket 06-0027. For Plan purposes, the APIs for the Residence, Packages, and Carrier basket were affected.

Staff states that it is satisfied with the API recalculations provided with AT&T Illinois’ Statement in Compliance in this proceeding. Staff states that it performed its own calculation of the API for each service basket and concurs with the results provided by AT&T. While Staff recognizes that the Packages basket was out of compliance from July 11, 2006 to October 31, 2006 (when the rate reductions for those services were instituted), it also considers this proceeding to be unique. At the outset, Staff notes that, in Docket 06-0269 and at the time it issued the 2006 Annual Filing Order, the Commission determined AT&T Illinois to be in compliance with the Plan requirements. Further, Staff observes that the rate reductions put forth by AT&T Illinois on October 31, 2006 for the Packages basket more than make up for the period that the API for the basket exceeded the PCI. As such, Staff avers that the total benefits to consumers for the year as mandated by the alternative regulation plan are ultimately delivered.

Staff considers that customers in the Packages basket did without revenue reduction for four months, as the alternative regulation compliance filing was made on July 11, 2006 and the rate reductions for the Section 13-518 packages occurred on October 31, 2006. Therefore, Staff states, only one-third of the annual shortfall of $9,388, for a total of $3,129, was realized by these customers. Staff would observe, however, that rate reductions that occurred on October 31 for these customers provide an annual benefit of $100,679, which must be modified to reflect its effectiveness for only two-thirds of the year, for a total of
$67,119. Staff concludes that, by comparing this figure to the $3,129 of foregone reductions from July to October, it is clear that customers are receiving net benefits well in excess of what is required for the Packages basket.

With respect to the first of the matters raised in the AG’s letter, Staff does not believe that retroactive rate changes would be necessary, as the issue at hand is whether the APIs for the respective alternative regulation service baskets are less than or equal to the PCI for the year. Staff argues that rate reductions, for the services found to have been improperly classified, are sufficient to bring AT&T Illinois in compliance with the 2006 Annual Filing Order.

As to the AG’s second issue, Staff assumes that the lower rates became effective for current customers and new customers on October 31, 2006, as this is the effective date of the tariff changes that reduced the rates. However, if evidence were to be introduced in this proceeding that shows that the reductions were not implemented on October 31, 2006, the calculation of the net annual benefit to customers would no longer be valid. As the tariff filing indicates that October 31 is the proper date of the reductions, AT&T Illinois would need to refund customers any overcharges from that date to the date it actually implemented the reductions.

Looking to the AG’s third issue, Staff understands that the rate reductions occurred for all Illinois customers and not just those in MSA 1, according to the October 31, 2006 filing. If the rate reductions occurred only in MSA 1, the API calculations would not show nearly the same benefit to consumers as was represented by AT&T Illinois.

Considering the AG’s fourth issue, Staff is of the opinion that these services experienced a name change and rate reduction, and as such should not be considered “new rates” or “new services” in the alternative regulation plan. Further, because AT&T Illinois included the Section 13-518 packages in its API calculations, Staff believes it clear that the company is not treating them as new services.

AG Reply to the Comments of the Staff

In response to the Staff, the AG states that AT&T Illinois did not make the rate reductions used in the API as of October 31, 2006, but delayed them to November 10, 2006. Also, the AG argues that Staff does not go far enough in supporting refunds to October 31,
given that consumers should be refunded to July 1.

In the AG’s view, Staff should not accept AT&T Illinois’ position that the size of the reduction excuses the late implementation of the rate reduction because this would create an incentive for AT&T Illinois to delay the effectiveness of rate reductions that are used to calculate the API in a given year.

Again, the AG notes that Section 13-502(e) of the PUA gives the Commission power to determine and order refunds to consumers for any overcharges which may have resulted from the improper classification. According to the AG, the higher rates consumers paid from July through November 9, 2006 were caused by the erroneous classification and, thus, consumers should receive refunds.

Also, the AG argues that the October 31, 2006 effective date that Staff accepts is actually ten weeks after the date of the Commission Order in Docket 06-0027. The AG points out that the October 31 date is late both in relation to the July 1 alternative regulation timeframe and in relation to the August 30, 2006 Order.

**Staff Reply Comments**

Staff maintains that the issues and the valid concerns, raised by the AG, have been satisfactorily addressed by AT&T Illinois as relevant to its compliance with the 2006 Annual Filing Order. Staff states that it is satisfied that the effective date of the tariff filing, implementing the rate reductions, is the date on which customers started receiving the benefits of these reductions, but it would add one minor clarification. Staff clarifies that October 31, 2006 was the filing date, while the actual effective date of the filing was November 10, 2006.

Staff does not agree with the AG’s position that benefits under the Alt Reg Plan were lost to consumers between July 1, 2006 and November 10, 2006. Staff notes the Commission to have determined, in Docket 06-0269, that there could be a potential impact on the Plan resulting from a possible reclassification of certain services in Docket 06-0027, but at that time, the evidence led the Commission to conclude that customers were receiving sufficient benefits from the Plan. Further, Staff notes the Commission to have stated, and correctly so, that refunds are “a matter governed by Section 13-502(e) of the Act, and this provision enters into our deliberations, if at all, in Docket 06-0027.” Order at 18, Docket 06-0629. Staff itself maintains that benefits to customers in the Alt Reg Plan would not be jeopardized due to the timing of the two dockets.
Staff further disagrees with the AG’s charge that, in order for the price reductions to the Consumer’s Choice packages to affect the API in the packages basket, these needed to occur on July 1, 2006. Staff would direct the Commission to language in the Alt Reg Order which states that:

While the PCI may change only once each year, the API may change at any time during the year when price changes are made. App. A to the Original Alt Reg Order, Section I.A.2(c).
Further, on page 4 of App. A, the Commission states as follows:

Illinois Bell may decrease prices for any of its noncompetitive services. Such price decreases will be included in the calculation of the API for a basket as described in Section I.A.2(c). App. A to the Original Alt Reg Order, Section I.A.2(g).

According to Staff, reducing the API at the time that the rate reductions to the Consumer’s Choice packages occurred, is consistent with the Plan. In this respect, Staff maintains that the AG has failed to show how consumers are harmed by reducing the API mid-year.

With respect to refunds, Staff states that it cannot justify requiring AT&T Illinois to make further rate reductions under the Alt Reg Plan because the API calculations made by AT&T Illinois were performed to Staff’s satisfaction and these show that consumers will receive more than the required benefits for the year. If the Commission disagrees, Staff has calculated that any refund for the period from July to November would be $.12 per line per month, for a total of $.48.

In response to the AG’s argument that AT&T Illinois improperly delayed implementing the Commission’s Order in Docket 06-0027, Staff notes that the Commission’s Order in Docket 06-0269 expressly ordered the recalculation and submission after the 30 days for rehearing.

Finally, Staff maintains that the issue of potential refunds for the period November 10, 2006 going forward, and other remedial action the AG may seek, the problems identified at the AT&T Illinois call center and with ordering over the AT&T Illinois web site appear to be issues entirely related to the reclassification docket and are not relevant to the matter before the Commission in this proceeding.

**AT&T Illinois Reply Comments**

AT&T Illinois notes that its Statement in Compliance provided the impact of reclassifying the legislative packages as noncompetitive on the overall rate reductions required for the Plan, i.e., July 2006-June 2007. According to AT&T Illinois, it fully demonstrated that the rate reductions for the noncompetitive legislative/safe harbor packages that have already been implemented in compliance with **Competitive Classification**...
Order provided customers with rate benefits far beyond what the Alt Reg Plan would otherwise have required. AT&T Illinois notes that Staff confirmed AT&T Illinois’ calculations and also that the AG does not dispute their accuracy. AT&T Illinois asserts, therefore, that the only contested issues in this proceeding involve collateral matters, i.e., whether additional retroactive true-ups are required by either the terms or design of the Plan and whether this proceeding should be the forum for addressing Docket 06-0027 compliance issues.

AT&T Illinois agrees that the Plan contemplates that the rate reductions needed to comply with the price index would ordinarily be made in July. It asserts, however, that these are not ordinary circumstances. According to AT&T Illinois, the pendency of Docket 06-0027 required an adjustment to the standard Annual Filing processes. It notes that the Commission recognized just that in its Order for Docket 06-0269 by requiring AT&T Illinois to resubmit its Annual Filing within 30 days of the denial of rehearing in Docket 06-0027, in the event that any services were reclassified. Since Docket 06-0027 was not resolved until late August, AT&T contends that there was and is no mechanism for making Docket 06-0027-related rate changes effective back in July, such that the task here is to determine a reasonable approach to Plan compliance that satisfies the Plan’s objectives.

AT&T Illinois states that the AG is correct in noting that the Plan does not specifically contemplate “partial year reductions.” But, AT&T Illinois would also point out that the Plan does not specifically prohibit them either. The fact that neither AT&T Illinois nor any other party has previously suggested a partial year application of a rate reduction is irrelevant, AT&T Illinois explains, because this situation has simply not come up before. Similarly, AT&T Illinois points out that nothing in the Plan specifically contemplates the resubmission of an Annual Filing after the rates go into effect in July nor does it authorize refunds under any circumstances.

According to AT&T Illinois, the overall purpose of the price index is to keep AT&T Illinois’ revenues (API), on an annual basis, at or below the PCI. On an annual basis, the rate changes AT&T Illinois implemented in November were approximately 10 times higher than the amount that would have been required by the Plan if the legislative packages had been included in the original filing: including these services in the April 2006 filing would have required only an additional $9,388 in annual revenue reductions, while the agreed-upon rate reductions in the Consumer’s Choice plans will reduce revenues by $100,679.

With respect to the AG’s claims that partial year rate reductions “will distort the Plan” and create “a dangerous precedent by allowing AT&T to manipulate the availability of rate changes,” AT&T Illinois states that the situation presented in this proceeding is sui generis. AT&T Illinois states that it has no plans to propose partial year rate changes in future annual filings and, it reasons that the Attorney General could certainly object at that time if it did.
Further, AT&T Illinois argues that Section 13-502(e) primarily addresses the situation where a carrier raises its rates for a competitive service and that service is subsequently found to be noncompetitive, which is not the situation here. None of the residence services AT&T Illinois reclassified as competitive were the subject of rate increases prior to the Competitive Classification Order, it argues, much less the legislative packages. It is not at all clear to AT&T Illinois that Section 13-502(e) would apply to a failure to reduce rates sufficiently under a plan of alternative regulation due to a classification that is subsequently overturned.

Moreover, AT&T Illinois avers that the timing of the rate changes was explicitly addressed in the AT&T Illinois/CUB Joint Proposal which the Commission approved in the Competitive Classification Order. The Joint Proposal required AT&T Illinois to file tariffs to effect the agreed-upon rate changes “. . . within 7 business days of the Effective Date” of a Commission Order in that proceeding. And, the “Effective Date” was defined in the Joint Proposal as follows:

“For purposes of this Joint Proposal the ‘Effective Date’ is defined as 35 days after the date of a final Commission order approving AT&T Illinois’ competitive classification pending in Docket No. 06-0027 and the Joint Proposal herein or, in the event that an application(s) for rehearing is (are) filed with respect to such an order, 10 days after the Commission’s denial of such application(s) for rehearing.” Joint Proposal, ¶ 17.

AT&T Illinois notes that the Commission further ordered that the legislative packages be reclassified as noncompetitive within 45 days of the date of the Order. Id. at 122 (second Ordering clause). AT&T Illinois asserts that it met all of these deadlines. In fact, AT&T Illinois explains that it accelerated the effective dates of the “safe harbor” tariff changes by filing a Petition for Special Permission to place the tariffs into effect on less than 45 days’ notice. And, the Commission granted such relief on October 25, 2006. Special Permission Docket 06-0673, (October 25, 2006). The tariffs were then filed on October 31, AT&T Illinois maintains, and to be effective November 10, 2006.

AT&T Illinois points out that the “lost rate benefits” over the period July 1 through November 10, 2006, amount to only $3,129. This calculation, it notes, is not in dispute. Yet, AT&T Illinois observes that the refund amount called for under the AG’s approach would exceed $70,000. Nothing in the Plan or Section 13-502(e) of the Act, AT&T Illinois argues, would permit the Commission to order refunds that are more than 20 times the amount that could conceivably be owed. Moreover, AT&T Illinois explains that the rate changes at issue were not effective until November 10. In AT&T Illinois’ view, it would constitute retroactive ratemaking for the Commission to now attempt to make these rates “effective” on July 1 instead. It is well established that retroactive ratemaking is prohibited. Illinois Bell Telephone
The remaining issues raised by the AG are irrelevant to this proceeding, according to AT&T Illinois. At the outset, AT&T Illinois argues, the AG misperceives the scope of this proceeding where the only relevant issue is whether AT&T Illinois’ overall rates are in compliance with the pricing constraints of the Alt Reg Plan. While the AG would claim that the Plan is premised on the assumption that the price reductions that go into the API calculation are actually available to customers, AT&T Illinois agrees to the extent that customers can and do have the right to subscribe to the services in its tariff and at the prices set forth therein. But, AT&T Illinois points out that this is not a Plan requirement, but rather follows from the Public Utilities Act. Whether customers subscribe to any particular product after the Plan year which is the subject of the Annual Filing, AT&T Illinois explains, is totally irrelevant to the calculation of the API/PCI. That is because, although all rate reductions are forward-looking, the API/PCI analysis is based solely on historical demand for the previous calendar year. Alternative Regulation Plan Order, Appendix A, Section I.A.2(c) (and formula contained therein). Thus, AT&T Illinois asserts, the only relevant demand for the reclassified legislative packages is 2005 demand – not demand by new customers in 2006. All of these customers (and any new customers who had subscribed in 2006) received the Docket 06-0027 rate reductions automatically when the tariff changes went into effect on November 10, 2006. In other words, AT&T Illinois maintains, these customers are receiving the expected benefits. Even if there were marketing missteps in late 2006, these are immaterial to AT&T Illinois’ compliance with the terms of the Plan, the price index, or any other issue relevant to this proceeding.

According to AT&T Illinois, even if the events of late 2006 were relevant to this proceeding, they do not rise to the level of a violation of the Competitive Classification Order. At most, the Attorney General has pointed to a period of confusion in November and December on the part of AT&T Illinois’ service representatives that resulted from CUB’s renaming of these packages. AT&T Illinois points out that both of the newspaper articles (on which the AG relies) quote CUB – which is closely monitoring the implementation of the Joint Proposal and directly interfacing with service representatives on behalf of customers – as stating that the situation was improving significantly. AG Comments, Exhibit A, Tribune Articles dated December 2, 2006 and February 6, 2007. Thus, AT&T Illinois argues, there is no real issue as to the “availability” of these packages.

Similarly, AT&T Illinois contends, the availability of online ordering for the “safe harbor” packages has nothing to do with Alternative Regulation Plan compliance. Nothing in the Plan – or the PUA for that matter – requires that AT&T Illinois even maintain a website, much less that any of its products or services be available for online ordering. This requirement stems only from the Commission’s Order in Docket 06-0027, which contained
no deadline for its implementation. *Competitive Classification Order* at 98,122.

**Commission Analysis and Conclusion**

We recognize that the filing which initiated this proceeding was called for by our Order in Docket 06-0269. Per our direction, and in response to certain reclassifications and rate changes owing to the final order in Docket 06-0027, AT&T Illinois has updated and revised the relevant pages to its 2006 Annual Filing. The result of this activity, AT&T Illinois states, is that the Plan requirements are fully met.

The question before us is whether the rate reductions implemented by AT&T Illinois on November 10, 2006, satisfy the requirements of the Alt Reg Plan. At the outset, we note that the calculations included in AT&T Illinois’ filing are not being challenged by either Staff or the AG. We observe the parties to agree that, in order to be in compliance with the Alt Reg Plan, AT&T Illinois needed to reduce revenues by $9,388 for the period July 1, 2006 through June 30, 2007. Further, we are informed that the reduction of rates implemented for the Consumer Choice Packages reduced revenues by $100,679, on an annual basis. For its part, Staff tells us that the rate reductions put forth by AT&T Illinois on October 31, 2006 (with an effective date of November 10, 2006) for the Packages basket more than make up for the period where the API for the basket exceeded the PCI. The whole of these record showings, suggest that AT&T Illinois is in compliance with the Alt Reg Plan annual filing requirement.

But, the matter is not without some controversy. To be sure, the AG claims that four months of price reductions were lost to customers in the interval before the rate changes went into effect and this situation calls for a refund. This contention arises from the AG’s view that the size of the reduction is neither as relevant, nor as important, as having the benefits of rate reductions for the entire year. The AG also uses the term “partial year reductions” and argues that such are not provided for under the Plan.

To be sure, the Plan operates on an annual basis. As such, partial year reductions are not the norm. At the same time, however, there is nothing to prohibit this action. Where the Plan gives no definitive instruction for the instant situation, the matter must be resolved on the basis of sound and reasonable judgment. And, in the exercise of such judgment, we are not inclined to exalt form over substance.
The AG’s push for a refund is not supported by either the facts or the law (including the Plan). In terms of fact, Staff’s pointed analysis and its review of AT&T Illinois’ filings, indicates that customers will receive more than the required benefits for the year. Indeed, it is impossible to ignore Staff’s contention that it cannot support anything more to be done in this matter. In terms of the law, there is nothing within the four corners of the Plan itself to authorize refunds. So too, in our Order for Docket 06-0269, we explicitly found that refunds are "a matter governed by Section 13-502(e) of the Act, and this provision enters into our deliberations, if at all, in Docket 06-0027." Order at 18, Docket 06-0269 (June 28, 2006). Here, we recognize, and just as explicitly, that by its terms, context, and present circumstance, this statute does not bear on the matters at hand. Indeed, we are not shown anything different. This is true even after we consider the AG’s arguments on exceptions.

It is well-settled that a statute must be read as a whole in order to determine what the General Assembly intended. Thus, the AG’s attempt to isolate the language of subsection (e) from the remainder of Section 13-502 is simply not proper under the rules of construction. Moreover, when read as a whole and with attention to its particulars for the investigation that was had in Docket 06-0027, the statute utterly fails to support the AG’s position in this proceeding.

We also observe the AG to claim that retroactive refunds are necessary to avoid creating a “dangerous incentive” for AT&T Illinois to delay the effectiveness of rate reductions.” (AG Exceptions at 2). This claim is not well considered. In all the years of these annual filings, we have never seen AT&T Illinois to proceed unilaterally without the involvement of Staff or some intervenors. Nothing we say here precludes such participation in future proceedings. Thus, the AG’s speculation about what AT&T Illinois itself might do in the future is unwarranted and unpersuasive. As with all other matters before the Commission, the outcome of each annual filing rests on its own merits.

With respect to the timeliness of the tariffing of the rate reductions by AT&T Illinois, the AG has shown no violation on the Company’s part. It is clear that AT&T Illinois complied with the timelines specified in Docket 06-0027 for filing its tariff and also with the timeline in Docket 06-0269 for the requisite filing made in this proceeding.

The AG also raised concerns that the safe harbor packages were not actually available to new customers on November 10, 2006. We note, however, that for the API/PCI analysis, the relevant demand is the 2005 demand - those customers that were receiving these packages in 2005. The record is clear that all 2005 historical customers received the rate reduction on November 10, 2006. Any further implementation issues or enforcement of the Order in Docket 06-0027 are beyond the scope of this proceeding. Nothing set in the AG’s arguments on exceptions persuades us otherwise.

In the final analysis, AT&T Illinois’ filing in this matter is determined to be in compliance with our Order in Docket 06-0269, and it provides the impact of reclassifying the
“legislative packages” as noncompetitive. The record as a whole demonstrates that the rate reductions for the noncompetitive “legislative” packages that have already been implemented in compliance with the Competitive Classification Order provide customers with rate benefits far beyond what the Alt Reg Plan would otherwise have required. As required, the APIs for the relevant baskets are lower than their associated PCIs. No retroactive refunds are required by the Alt Reg Plan for the period from July 1, 2006 through November 10, 2006, if for no other reason than the annual revenue effect of the rate changes for the remainder of the Plan year (November 10, 2006 through June 30, 2007) substantially exceeds the annual revenue effect that would have been required for the entirety of the July 1, 2006 through June 30, 2007 period.

Findings and Ordering Paragraphs

The Commission, having considered the entire record herein and 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;

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

3) the recital of fact and law and the conclusions reached in the prefatory portion of this Order are supported by the record, and are hereby adopted as findings of fact and conclusions of law for purposes of this Order;

4) the rate changes implemented by Illinois Bell Telephone Company on November 11, 2006 consistent with the Commission’s Order in Docket 06-0027, result in APIs for the relevant baskets that are lower than their associated PCIs and no further rate reductions or refunds are required by the Alt Reg Plan;

5) any materials submitted in this proceeding for which proprietary treatment was requested should be accorded proprietary treatment;
6) any petition, objections, and motions in this docket that have not been specifically disposed of should be disposed of in a manner consistent with our conclusions herein.

IT IS THEREFORE ORDERED that the rate changes implemented by Illinois Bell Telephone Company on November 11, 2006, consistent with the Commission’s Order in Docket 06-0027, result in APIs for the relevant baskets that are lower than their associated PCIs and no further rate reductions or refunds are required by the Alt Reg Plan.

IT IS FURTHER ORDERED that any materials submitted in this proceeding for which proprietary treatment was requested shall be accorded proprietary treatment.

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

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

By Order of the Commission this 16th day of May, 2007.

(SIGNED) CHARLES E. BOX

Chairman