

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AT&T Communications of Illinois, Inc., Illinois Bell Telephone Company and the Illinois Independent Telephone Association : : **97-0621**
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Joint Petition for Approval of Stipulation establishing 1998 Illinois DEM Weighting Fund and for other relief. : :
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ORDER

By the Commission:

On November 26, 1997, AT&T Communications of Illinois, Inc. ("AT&T"), Illinois Bell Telephone Company ("Ameritech-Illinois") and the Illinois Independent Telephone Association ("IITA") filed a Joint Petition seeking the approval of a Stipulation (Exhibit "A" to the Joint Petition) establishing a 1998 Dial Equipment Minutes of Use ("DEM") weighting fund and for other relief. On December 15, 1997, the IITA, on behalf of the joint petitioners, filed a Motion for Leave to File Amended Joint Petition and for Leave to File Amended Paragraph 9 to the Stipulation and to supplement Exhibit "A" with additional signature pages.

The Amended Joint Petition and Exhibit "A" proposed that the 1998 Funding Carriers be: Ameritech-Illinois, AT&T, GTE North Incorporated ("GTE"), Consolidated Communications Telcom Services, Inc. ("Consolidated Communications"), Illinois Consolidated Telephone Company ("ICTC"), MCI Telecommunications Corporation ("MCI"), Sprint Communications Company L.P., d/b/a Sprint Communications L.P. ("Sprint"), Central Telephone Company of Illinois ("Centel"), Frontier Communications International Inc. ("Frontier International"), Frontier Communications Services, Inc. ("Frontier Services") and HTC Communications ("HTC"). The IITA executed the Stipulation on behalf of all of the Funded Carriers as identified in the Stipulation. The Stipulation was executed by all of the 1998 Funding Carriers with the exception of GTE.

I. PROCEDURAL HISTORY

On December 15, 1997, a prehearing conference was conducted by a duly authorized Hearing Examiner at the Commission's offices in Springfield, Illinois. Appearances were entered by counsel for AT&T, Ameritech-Illinois, IITA, MCI, GTE and

Staff. The purpose of the prehearing conference was to narrow and define the issues and for appropriate scheduling.

At the prehearing conference on December 15, 1997, counsel for GTE stated that GTE agreed with the principles contained in the Stipulation related to making implicit subsidies explicit through the creation of a 1998 DEM weighting fund. Counsel for GTE went on to state that at that time, based on the information then available to GTE, GTE had questions concerning the size of the fund, and in turn, GTE's proportionate funding obligation under the temporary funding method as described in paragraphs 8, 9 and 10 of Exhibit "A". Counsel for GTE asked that the Staff, through Data Requests to both the IITA and the 1998 Funding Carriers, seek information concerning the amount of the 1997 local switching access charges billed by the 1998 Funded Carriers to the 1998 Funding Carriers and the amount of the 1997 local switching access charges paid by the 1998 Funding Carriers to the 1998 Funded Carriers so that Staff could independently verify the estimated amount of the 1998 DEM weighting fund. No party objected to GTE's request, and Staff subsequently requested the information from the 1998 Funded Carriers and the 1998 Funding Carriers sought by GTE.

At the prehearing conference, counsel for GTE also stated that GTE desired to file testimony on the issue of the "true up" and "cap" related to the permanent funding method as set forth in paragraph 15 of Exhibit "A". No party objected to GTE filing testimony on these issues.

At the December 15, 1997 prehearing conference, counsel for the IITA stated that even if the limited issues raised by GTE were addressed on an expedited basis, the 1998 Funded Carriers would experience substantial decreases in their revenues by lowering their intrastate local switching rates to remove DEM weighting effective January 1, 1998, if replacement funds were not coming from the 1998 DEM weighting fund beginning in January, 1998. The parties agreed that an emergency funding level and funding method should be put in place by an Interim Order of the Commission, with that fund level beginning in January, 1998, or the date on which the 1998 Funded Carriers' lower intrastate local switching rates became effective, whichever is later, until final action by the Commission on the Amended Joint Petition and Stipulation.

At the prehearing conference, an emergency fund level of \$10,948,905 for 1998 or \$912,408.75 per month beginning in January, 1998 or the date on which the 1998 Funded Carriers' lower intrastate local switching rates become effective, whichever is later, was agreed upon pending final action by the Commission. The agreed upon emergency funding method was the temporary funding method described in paragraphs 8, 9 and 10 of the Stipulation based on the estimated proportionate funding obligations of the 1998 Funding Carriers developed by the IITA. By agreement, the Illinois Small Company Exchange Carrier Association ("ISCECA") was to be named the fund administrator of the emergency 1998 DEM weighting fund.

It was further agreed that the emergency fund level did not alter the 1998 DEM weighting fund level of \$11,817,400, for which approval was sought by the Joint Petition

and as is set forth in Exhibit "A". It was further agreed that all necessary adjustments would be implemented by the ISCECA and the Carriers following final action by the Commission on the Amended Joint Petition and Stipulation.

On December 30, 1997, at a prehearing conference conducted by a duly authorized Hearing Examiner at the Commission's offices in Springfield, Illinois, an expedited schedule agreed to by the parties was established. On January 7, 1998, the Commission entered an Interim Order establishing an emergency 1998 DEM weighting fund as described above.

On February 10, 1998, this case was heard before a duly authorized Hearing Examiner at the Commission's offices in Springfield, Illinois. Appearances were entered by counsel for AT&T, Ameritech-Illinois, IITA, GTE, MCI, Centel and Staff. Counsel for the IITA moved to amend the prayer of the Amended Joint Petition to, in the alternative, seek Commission approval of the 1998 DEM weighting fund proposal as described in Exhibit "A" to the Amended Joint Petition independent of the approval of the Stipulation itself. Counsel for the IITA submitted that the alternative prayer for relief was necessary since GTE had not executed the Stipulation. No party objected and the motion was granted by the Hearing Examiner. Counsel for GTE stated that the only contested issue with regard to the 1998 DEM weighting fund proposal was the "true up" and "cap" provisions described in paragraph 15 of Exhibit "A".

At the hearing on February 10, 1998, the Testimony (IITA Exhibit "1"), Supplemental Direct Testimony (IITA Exhibit "2"), and Rebuttal Testimony (IITA Exhibit "3") of David H. Lewis, Vice President and Midwest Regional Manager of GVNW Inc./Management, on behalf of the IITA, was introduced into the record. The Testimony (ICC Staff Exhibit "1.00") and Rebuttal Testimony (ICC Exhibit "1.01") of Rasha Topozada-Yow, Interim Chief of the Policy Section within the Telecommunications Division of the Illinois Commerce Commission, was entered into the record. The Direct Testimony (GTE Exhibit "1.00") of Gregory D. Smith, State Manager-Industry Affairs for GTE, was entered into the record. The Direct Testimony (AT&T Exhibit "1") of Cathleen M. Conway, District Manager-Regulatory Matters for AT&T, was entered into the record by Affidavit. The Rebuttal Testimony (MCI Exhibit "1") of Dennis L. Ricca, Senior Regulatory Analyst for Public Policy for the Northern Region of MCI, was entered into the record by Affidavit. There was no cross-examination of any of the witnesses; and at the conclusion of the hearing on February 10, 1998, the record was marked "Heard and Taken."

The IITA filed a Draft Order to which GTE filed Exceptions. A Hearing Examiner's Proposed Order was issued and served upon all parties. All Exceptions and Replies to Exceptions have been considered in reaching the conclusions herein.

II. THE FUNDING PROPOSAL

As set forth in the Amended Joint Petition and as discussed by Mr. Lewis in his testimony, the details of the proposed 1998 DEM weighting fund are set forth in Exhibit "A" to the Amended Joint Petition and will be referenced herein. Under the Federal Communication Commission's ("FCC") Rules in effect prior to January 1, 1998, small local exchange carriers were allowed to include within the development of their interstate local switching rates a DEM weighting factor. The FCC's Access Charge Reform Order provided that beginning January 1, 1998 small companies would no longer include the DEM weighting factor in the development of their interstate local switching rates but would be allowed to recover those interstate revenues associated with DEM weighting from federal universal service funding beginning January 1, 1998. (Exhibit "A" paragraphs 1-4)

Mr. Lewis testified that as noted in paragraph 5 of Exhibit "A", this Commission's Orders in Docket Nos. 83-0142, 90-0425 and 94-0047 dealing with intrastate access charge issues directed Illinois local exchange carriers to "mirror" the interstate access charge rate structure with certain adjustments or differences. The mirroring on an intrastate basis of the interstate local switching rates with DEM weighting removed results in small local exchange carriers, who received DEM support, having a significant reduction in their intrastate access charge revenues. On the interstate level, the FCC took action to allow for the recovery of that support through federal universal service funding. Mr. Lewis testified that the 1998 DEM weighting fund proposal addresses that issue on an intrastate basis for the year 1998.

The 1998 DEM weighting fund is proposed to be a fixed level of \$11,817,400 plus administrative expenses. (Exhibit "A" paragraph 10) Mr. Lewis testified that the fixed level of the fund represented an approximate 8% reduction from what the IITA had estimated the amount of the Illinois intrastate DEM weighting dollars included in intrastate access charges the funded companies would receive in 1997. All affected parties (both funded and funding carriers), with the exception of GTE, agreed to the fixed amount of the 1998 DEM weighting fund prior to the December 15, 1997 prehearing conference.

Following the agreement reached on December 15, 1997, the Staff issued Data Requests to both the funded and funding companies concerning the amount of intrastate local switching charges paid or received by them for the year 1997 on a carrier-by-carrier basis.

Mr. Lewis testified that the IITA's original estimate of \$12,845,000 of 1997 DEM weighting revenues to be received by funded companies (Exhibit "A" paragraph 5) was developed based on information available in May and June of 1997. Based on the updated actual 1997 results provided in response to the Staff's Data Request, Mr. Lewis testified that his revised estimate of the amount of DEM weighting revenues that would be removed from intrastate access charges was between \$12,742,114 and \$13,162,486. He stated that \$13,162,486 was a better estimate. No dispute among the affected parties now exists as to the \$11,817,400, plus administrative expenses, fixed amount of the 1998 DEM weighting fund.

Ms. Topozada-Yow testified that based on the information provided by both the funding and the funded carriers, it was her understanding that all data discrepancies had been resolved between the funded carriers and Ameritech-Illinois, GTE, AT&T, MCI, HTC and Sprint. She testified that certain discrepancies that could affect the carriers' proportionate funding obligations remained with other carriers. She testified that she would continue to work with the affected carriers to resolve these disputes and make any needed adjustments in the proportionate funding obligations.

Ms. Topozada-Yow also testified that Odin Telephone Exchange, Inc.'s ("Odin") reduced intrastate local switching rate would not go into effect until February 14, 1998; and as a result, Odin should not be eligible to receive funds from the 1998 DEM weighting fund prior to February 14, 1998. The Witness recommended that the Commission adopt the Stipulation as a temporary solution to the funding shortfall occasioned by the FCC's recent action making explicit the subsidy that was previously recovered implicitly through the DEM weighting factor.

III. COMMISSION ANALYSIS AND CONCLUSION ON THE FUNDING PROPOSAL

The FCC's removal of DEM weighting from the development of interstate access charges, coupled with this Commission's "mirroring" requirements related to intrastate access charges, have resulted in a significant lowering of the funded companies' intrastate access charges beginning January 1, 1998. In turn, the loss of revenues to the funded carriers is significant. By transferring DEM weighting dollars for small rural local exchange carriers from interstate access charges to interstate universal service funding, the FCC made the recovery of a subsidy for small rural local exchange carriers serving high cost areas explicit rather than implicit. (Exhibit "A" paragraph 6) The proposed 1998 DEM weighting fund has the same effect for the year 1998 on an intrastate basis. The proposed 1998 DEM weighting fund is a one-year resolution addressing that revenue shortfall. The record is clear that we are not today deciding whether a fund such as the 1998 DEM weighting fund is needed beyond 1998, the funding level, if any, that should be established for years after 1998, and how any post 1998 fund should be funded. Those issues will be addressed in subsequent proceedings in a new docket.

In regard to the 1998 funded carriers, the proposal is that the recipients of the 1998 funds would be those local exchange carriers, who prior to January 1, 1998, received DEM weighting within their Illinois company specific intrastate access charges. The 1998 funded carriers should receive the same percentage of the 1998 fund that the company received in DEM weighting dollars included in their local switching rate differential compared to the total DEM weighting dollars received by all Illinois funded companies through their company specific intrastate local switching rate differential due to DEM weighting. (Exhibit "A" paragraph 11)

In regard to the 1998 funding carriers, the proposal is that those carriers should be Ameritech Illinois, AT&T, GTE Consolidated Communications, ICTC, MCI, Sprint, Centel, Frontier International, Frontier Services and HTC. While certain other carriers have paid

DEM weighting dollars included in access charges to Illinois local exchange carriers, the proposal is that they should be excluded from the 1998 funding carriers for administrative ease. Mr. Lewis testified that based upon the updated information provided in response to the Staff's Data Request, the identified 1998 funding carriers paid approximately 97.645% of the total local switching access paid to funded carriers. The 1998 funding carriers' share of the 1998 funding responsibility is to be proportionately adjusted so as to fully fund the 1998 fund, including administrative expenses. (Exhibit "A" paragraph 9)

The 1998 fund is to be administered by the ISCECA and the administrative costs of the ISCECA are to be included within the 1998 fund. The administrative expenses are to be no more than \$24,000. The ISCECA was appointed the administrator of the emergency 1998 DEM weighting fund by the Interim Order entered on January 7, 1998.

The Commission agrees that the funding proposal constitutes a reasonable temporary means to avoid the funding shortfall that would occur if the funding and funded carriers were to continue to mirror federal tariffs in Illinois and should, accordingly be adopted.

IV. THE "TRUE UP" AND "CAP" PROPOSALS

As indicated above, the only contested issues between and among the affected carriers are the so-called "true up" and "cap" proposals. Those proposals are contained in paragraph 15 of Exhibit "A", which states as follows:

15. Following the adoption of a Permanent Funding Method, pursuant to a final and non-appealable Commission Order, there shall be a "true-up" solely between and among the 1998 Funding Carriers who have contributed to the 1998 Fund using the Temporary Funding Method. The intent of the "true-up" is to, on a proportionate basis, adjust among those 1998 Funding Carriers payments made under the Temporary Funding Method to that of the Permanent Funding Method for the period between January 1, 1998 up to the date the Permanent Funding Method is placed into effect. The Parties agree, however, that there will be a "cap" on the amount any 1998 Funding Carrier will have to pay into the 1998 Fund for the year 1998 as a result of a "true-up" from the Temporary Funding Method to the Permanent Funding Method. The Parties agree that the maximum amount any 1998 Funding Carrier shall pay for the calendar year 1998 is one hundred fifty percent (150%) of the amount that the 1998 Funding Carrier has paid or would pay under the Temporary Funding Method. The parties recognize and agree that the "cap" associated with the "true-up" as set forth above could affect the proportionate amount of any refund a 1998 Funding Carrier may be entitled to receive. The "true-up" should be administered by the Illinois Small Company Exchange Carrier Association ("ISCECA") or a successor designated by the Commission."

All funded and funding carriers, with the exception of GTE, agreed to the “true up” and “cap” proposals by executing Exhibit “A”. Mr. Lewis, in his Direct Testimony, explained that the true up to the permanent funding method, the “cap” on the true up, and the amount of the “cap” are each and all products of negotiations. He indicated that the funding carriers, such as Ameritech and AT&T, as well as other parties, do not agree on what a permanent funding methodology should be but recognized that the Commission in a subsequent proceeding would make such a determination.

Mr. Smith of GTE testified that there was no need for a true up because the Commission can use actual 1997 DEM payments to establish 1998 DEM funding. He stated that GTE believes the proposed true up is unfair because it bears no relationship to actual 1997 DEM payments made by the funding carriers. He testified that GTE recommends that the Commission order each funding carrier to continue paying DEM funding in 1998 at the actual 1997 DEM funding amount less 8%.

In response to Mr. Smith’s claim that the true up provision is unnecessary, Ms. Conway of AT&T, testified that Mr. Smith’s proposal ignores the primary purpose of the true up mechanism, which is to ultimately reconcile the method of funding for the 1998 DEM weighting fund with any competitively neutral funding method that the Commission determines to be appropriate. Ms. Conway stated that it is the reconciliation with the permanent method that is the point of the true up, not the need to reallocate payments based on more current carrier data as inferred by Mr. Smith.

In responding to Mr. Smith’s claim that the proposed true up would be unfair because “it bears no relationship to actual 1997 DEM payments made by the funding carriers,” Ms. Conway testified that until a competitively neutral funding method is determined in a subsequent proceeding, it is not possible to conclude that the results of a true up would bear no relationship to actual 1997 DEM payments. She went on to indicate that to the extent a permanent funding method differed from the distribution of the 1997 DEM payments, it was reasonable to assume that the difference would represent a more competitively neutral distribution based on the Commission’s determination in a subsequent proceeding.

Mr. Ricca of MCI testified that Mr. Smith’s claim that the true up is unreasonable has no back-up support in his testimony. Mr. Ricca stated that GTE’s reasoning is unfounded because it assumes the permanent funding mechanism will bear no relationship to the 1997 funding payments when no one yet knows what the permanent funding mechanism will be. Mr. Ricca testified that the issue of the appropriate funding mechanism will be decided by the Commission on the basis of the record in subsequent permanent subsidy funding mechanism docket.

Ms. Topozada-Yow expressed the opinion that while the funding mechanism is apparently inconsistent with certain requirements of the federal Act and the FCC’s Universal Service Order, the “true up mechanism” may correct the inconsistencies with Section 254(f) of the Act. She recommended that the Commission reject Mr. Smith’s recommendation to do away with the Stipulation.

Mr. Lewis, in his Rebuttal Testimony, indicated that Mr. Smith's recommendation was not acceptable to the IITA and testified that the "true up" and "cap" provisions contained in Exhibit "A" became the agreed to method to bridge the dispute concerning the permanent funding method so the 1998 DEM weighting fund could be implemented. Mr. Lewis testified that GTE will have the opportunity to present a proposal concerning what should be an appropriate funding method for the 1998 DEM weighting fund in the follow-up proceeding. He observed that if GTE made the same proposal contained in Mr. Smith's testimony and this is adopted as a competitively neutral funding methodology, it would become the permanent funding method and effectively negate the need for a "true up." Mr. Lewis testified that while the Commission may or may not agree with GTE's recommendation as to what should be adopted as a competitive neutral funding methodology, GTE and every other party would have the full opportunity to propose what they believed to be an appropriate funding method for the 1998 DEM weighting fund in the follow-up proceeding.

V. COMMISSION ANALYSIS AND CONCLUSION ON TRUE UP AND CAP

The record makes clear that the 1998 DEM weighting fund proposal, described above and as contained in Exhibit "A" to the Amended Joint Petition, is a product of extensive negotiations and reflects compromises resulting from those negotiations. All affected parties (both funded and funding carriers), with the exception of GTE, have executed the Stipulation, with the only contested issues being the "true up" and "cap" provisions described above. The determination of an intrastate funding mechanism for this fund, or any other intrastate universal service funding mechanism that we may choose to create, will be addressed in subsequent dockets involving all potentially affected parties. Those parties will have the opportunity to propose intrastate universal service funding methodologies, which they believe to be consistent with the federal Act and relevant FCC Orders. The "true up" and "cap" proposals are reasonable provisions for the 1998 DEM weighting fund, which is being created to temporarily address a unique circumstance that has arisen prior to our consideration of larger issues.

The ISCECA, as administrator, should implement any and all necessary adjustments consistent with this Order and the approval of the 1998 DEM weighting fund approved herein. The ISCECA should administer the 1998 DEM weighting fund in accordance with the provisions contained in Exhibit "A" to the Amended Joint Petition.

VI. 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) the Commission has jurisdiction of the parties hereto and the subject matter hereof;

- (2) the recitals of fact and conclusions of law set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law herein;
- (3) a 1998 DEM weighting fund should be established beginning in January, 1998 or the date on which the 1998 funded carriers' lower intrastate local switching rates become effective, whichever is later, and shall have a duration no longer than December 31, 1998;
- (4) a fund level of \$11,817,400, plus administrative expenses, for 1998 is established as described in the prefatory portion of this Order;
- (5) the 1998 DEM weighting fund supersedes and replaces the emergency 1998 DEM weighting fund established by the Interim Order of January 7, 1998 in this docket;
- (6) the ISCECA is appointed administrator of the 1998 DEM weighting fund and should administer the fund in accordance with the provisions of Exhibit "A" to the Amended Joint Petition;
- (7) the funding methods described in the prefatory portion of this Order and in Exhibit "A" to the Amended Joint Petition are adopted, including but not limited to the "true up" and "cap" provisions set forth in the prefatory portion of this Order;
- (8) the ISCECA shall make collections and disbursements of the fund on a monthly basis and shall make all necessary adjustments to comply with the provisions of the 1998 DEM weighting fund approved herein;
- (9) Staff, within 90 days, should file a Report with the Commission containing Staff's recommendation for the institution of an appropriate separate proceeding for the determination of an intrastate universal service funding methodology that meets the requirements of the federal Act and relevant FCC Orders. Staff's Report should address the appropriate type of proceeding and the necessary parties to such a proceeding; and
- (10) any objections or motions that have not been specifically disposed of should be disposed of in a manner consistent with our conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a 1998 Illinois DEM weighting fund is established.

IT IS FURTHER ORDERED that a funding level of \$11,817,400, plus administrative expenses, for 1998 is established as set forth in finding (4) hereof.

IT IS FURTHER ORDERED that the 1998 Illinois DEM weighting fund supersedes and replaces the emergency 1998 DEM weighting fund previously established in

accordance with finding (5) hereof and that the new 1998 DEM weighting fund shall have a duration of no longer than December 31, 1998.

IT IS FURTHER ORDERED that the Illinois Small Company Exchange Carrier Association shall be the administrator of the 1998 Illinois DEM weighting fund and is directed to administer said fund in accordance with the provisions of Exhibit "A" to the Amended Joint Petition.

IT IS FURTHER ORDERED that the funding methods for the 1998 Illinois DEM weighting fund shall be in accordance with finding (7) hereof.

IT IS FURTHER ORDERED that the Illinois Small Company Exchange Carrier Association shall take all necessary actions to make collections, disbursements and adjustments in accordance with findings (3) and (8) hereof.

IT IS FURTHER ORDERED that the Staff shall file a report with the Commission within 90 days of the date of this Order in accordance with finding (9) hereof.

IT IS FURTHER ORDERED that Staff shall prepare a schedule reflecting the funding liability of each funding carrier under the 1998 Funding Proposal and circulate to each carrier that is a party to this docket, within 90 days of the entry of this Order, a notice identifying that carrier's funding liability.

IT IS FURTHER ORDERED that any objections or motions made in this proceeding and not otherwise disposed of herein are disposed of in a manner consistent with the conclusions contained herein.

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 8th day of July, 1998.

(SIGNED) RICHARD L. MATHIAS

Chairman

(S E A L)