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BEFORE THE
ILLINOIS COMMERCE COMMISSION

PUBLIC UTILITY REGULAR OPEN MEETING

Chicago, Illinois
October 25, 2011

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

BEFORE:

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

MS. LULA M. FORD, Commissioner

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

MR. SHERMAN J. ELLIOTT, Commissioner

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

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

8 We have a quorum.

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

18 Moving into the agenda, Item 1 today
19 is Docket No. 11-0661. This is American Transmission
20 Company's Petition for authority to construct a new
21 345,000 volt transmission line in Lake County.
22 Before us today is a motion made by Staff to extend

1 the statutory deadline for Commission action in this
2 Docket. ALJ Teague recommends granting the motion.

3 Is there any discussion?

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

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

8 JUDGE TEAGUE. Yes.

9 COMMISSIONER O'CONNELL-DIAZ: Thank you.

10 CHAIRMAN SCOTT: Any further discussion?

11 (No response.)

12 Is there a motion to grant our request
13 an extension?

14 COMMISSIONER O'CONNELL-DIAZ: So moved.

15 ACTING COMMISSIONER COLGAN: So moved.

16 CHAIRMAN SCOTT: Is there a second?

17 COMMISSIONER ELLIOTT: Second.

18 CHAIRMAN SCOTT: It's been moved and seconded.

19 All in fair say "aye."

20 (Chorus of ayes.)

21 Any opposed?

22 (No response.)

1 The vote is 5-0 and the request is
2 granted. We will use a 5-0 vote for the remainder of
3 today's agenda unless otherwise noted.

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

11 Is there any discussion?

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

14 CHAIRMAN SCOTT: Sure.

15 COMMISSIONER O'CONNELL-DIAZ: Judge Riley, with
16 regard to the -- this is obviously an Interim Order
17 so there will be -- in accordance with your memo and
18 your recommendation is that the Staff now will do an
19 investigation relative to this Petition. If there is
20 a finding that they do not qualify, is there a refund
21 mechanism for those funds that, I think, will be
22 flowing based upon this Interim Order?

1 JUDGE RILEY: My best answer is, I don't know
2 of any refund mechanism.

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

5 JUDGE WALLACE: Commissioner --

6 COMMISSIONER O'CONNELL-DIAZ: Yes.

7 CHAIRMAN SCOTT: Judge Wallace.

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

11 COMMISSIONER O'CONNELL-DIAZ: Okay.

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

14 JUDGE WALLACE: Yes.

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

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

20 COMMISSIONER ELLIOTT: If Staff has not had a
21 full opportunity to review the evidence, then I'm a
22 little troubled by the fact that we're assuming, at

1 least interim-wise, that there's sufficient evidence
2 to make a finding.

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

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

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

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

21 JUDGE RILEY: So far, yes. On an interim
22 basis, absolutely.

1 COMMISSIONER O'CONNELL-DIAZ: And Staff has
2 agreed to that to, haven't they?

3 JUDGE WALLACE: Yes. That's my understanding.

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

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

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

17 CHAIRMAN SCOTT: Any further discussion?

18 (No response.)

19 Is there any objection to entering the
20 Interim Order?

21 (No response.)

22 Hearing none, the Interim Order is

1 entered.

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

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

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

21 And the dispute now arose as to what
22 is the -- what amount should be escrowed. And

1 Infotelecom is saying, We haven't reach -- the
2 trigger amount was \$500,000 per month. And
3 Infotelecom is saying, We haven't calculated more
4 than \$500,000 in any month in any state involved.
5 Illinois Bell is saying this is a cumulative amount
6 and it accumulates month by month over an entire 13
7 state region, so there are millions of dollars that
8 should be in escrow right now and nothing is in
9 escrow. And the written decision that I issued
10 yesterday finds for Illinois Bell.

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

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

15 COMMISSIONER FORD: I see.

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

19 JUDGE RILEY: Well, as a matter of fact, no.
20 But the statute says in a Section 13-515 case is that
21 once I've issued my decision -- the memo has a maze
22 of deadlines in it. What happens now is that the

1 party can request a Commission review of the written
2 decision that I issue, and they have five days to do
3 that. And then any party may file a response three
4 days after that. So the time is about as tight as
5 can get. And 15 days after the issuance of the
6 written decision, which was yesterday, is November 8.
7 That is the absolute final date for Commission
8 action. And the statute also says that the
9 Commission can either adopt this decision or write
10 its own.

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

14 JUDGE RILEY: Right. And I understand there's
15 a Bench Session on the 2nd and another meeting on the
16 8th.

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

20 JUDGE RILEY: Exactly. Yes.

21 COMMISSIONER ELLIOTT: Judge, I have a question
22 with regard to the multistate issue. The issue

1 here -- the Commissions in other states were the same
2 as just being a litigator are free to reach different
3 conclusions. I guess the end result, assuming that
4 something of that nature might occur, who is the
5 ultimate arbiter? Is it the FCC? Because if states
6 come to different conclusions, is the ultimate
7 arbiter here the FCC or is it us?

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

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

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

17 MR. HARVEY: Well, expert is a very generous
18 assessment. I believe that the matter would be taken
19 properly to the courts, but that's certainly
20 something we can find out for you and make some sort
21 of filing in the case, if that's going to assist the
22 Commission in reaching their determination.

1 COMMISSIONER ELLIOTT: It's a 252 decision. It
2 would seem to me ultimately it's FCC if there's
3 disputes among the states. I'm a little confused
4 about that.

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

7 COMMISSIONER ELLIOTT: For multistate
8 discrepancies?

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

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

1 be helpful.

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

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

10 COMMISSIONER ELLIOTT: Understood. Thank you.

11 CHAIRMAN SCOTT: Anything further on that
12 issue?

13 (No response.)

14 Okay. Thank you, Judge Riley.

15 JUDGE RILEY: Sure.

16 CHAIRMAN SCOTT: Item 4 is Docket No. 11-0631.
17 This is PEG Bandwidth's application for a
18 certificates of authority to provide resold and
19 facilities based local and interexchange
20 telecommunications services in Illinois. ALJ Teague
21 recommends entry of an Order granting the requested
22 certificates.

1 It there any discussion?

2 (No response.)

3 Any objections?

4 (No response.)

5 Hearing none, the Order is entered.

6 Item 5 is Docket No. 11-0668. This is
7 Dex One's Petition seeking a waiver for the
8 requirement of Title 83, Section 735.180 sub A, sub
9 1, and sub D of the Administrative Code pursuant to
10 Section 13-513 of the Public Utilities Act. ALJ
11 Riley recommends that the Commission authorize an
12 investigation of the Petition on its own motion based
13 upon Staff's request.

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

1 purposes?

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

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

15 Is there a discussion on this
16 particular issue?

17 (No response.)

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

20 COMMISSIONER ELLIOTT: So moved.

21 CHAIRMAN SCOTT: Is there a second?

22 COMMISSIONER O'CONNELL-DIAZ: Second.

1 CHAIRMAN SCOTT: It's been moved and seconded.

2 All in favor say "aye."

3 (Chorus of ayes.)

4 Any opposed?

5 (No response.)

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

8 Item 6 is Docket Nos. 11-0059,
9 11-0141, and 11-0142 consolidated. This item will be
10 held for disposition at a future proceeding, but does
11 anyone have questions for ALJ Teague on this item
12 today?

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

15 JUDGE TEAGUE: Yes.

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

18 JUDGE TEAGUE: Yes.

19 COMMISSIONER O'CONNELL-DIAZ: Thank you.

20 JUDGE TEAGUE: I just wanted to update the
21 Commission on the number of public comments that have
22 been received in this docket. There have been 19

1 public comments received regarding Great Northern's
2 increase, 67 regarding Camelot's and 2 regarding Lake
3 Holiday's.

4 COMMISSIONER FORD: Thank you.

5 CHAIRMAN SCOTT: Thank you.

6 Any further discussion on that item
7 today?

8 (No response.)

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

12 Is there a motion to go into closed
13 session?

14 COMMISSIONER O'CONNELL-DIAZ: So moved.

15 CHAIRMAN SCOTT: Is there a second?

16 COMMISSIONER FORD: Second.

17 CHAIRMAN SCOTT: It's been moved and seconded.

18 All in favor say "aye."

19 (Chorus of ayes.)

20 Any opposed?

21 (No response.)

22 The vote is 5-0 and the Commission

1 will go into closed session. Please let me know when
2 the room is ready in Chicago.

3 (Whereupon at this point pages
4 19 - 30 of the proceedings are
5 contained in a separate closed
6 transcript.)

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CONTINUATION OF PROCEEDINGS

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

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

Is there a second?

ACTING COMMISSIONER COLGAN: Second.

CHAIRMAN SCOTT: It's been moved and seconded.

All in favor say "aye."

(Chorus of ayes.)

Any opposed?

(No response.)

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

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

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

CHAIRMAN SCOTT: Hearing none, the meeting stands adjourned.

Thank you, Mr. Harvey.

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

1 and commissioners.

2 (And those were all the
3 proceedings had.)

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