

AN ACT concerning telecommunications.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 5. The Public Utilities Act is amended by adding
Sections 13-408 and 13-409 as follows:

(220 ILCS 5/13-408 new)

Sec. 13-408. Unbundled network element rates. This Section applies to and covers certain unbundled network element rates that shall be charged by incumbent local exchange carriers that are subject to regulation under an alternative regulation plan under Section 13-506.1 of this Act. The General Assembly finds and determines that it should provide direction to the Illinois Commerce Commission regarding the establishment of the monthly recurring rates that such incumbent local exchange carriers shall charge other telecommunications carriers for unbundled loops, whether provided on a standalone basis or in combination with other unbundled network elements, in order to ensure (i) that such rates are consistent with the requirements of the federal Telecommunications Act of 1996, the regulations promulgated thereunder, and subsection (g) of Section 13-801 of this Act, and (ii) that such incumbent local exchange carriers are able to recover the efficient, forward-looking costs of creating, operating, and maintaining the network outside plant infrastructure capacity and switching and transmission network capacity necessary to permit such incumbent local exchange carriers to meet in a timely and adequate fashion the obligations imposed by Section 8-101 of this Act.

In order to ensure recurring unbundled network element rates for loops that accomplish these objectives, the

Illinois Commerce Commission shall set the recurring rates affected incumbent local exchange carriers receive for unbundled loops, whether provided on a standalone basis or in combination with other unbundled network elements, in accordance with the requirements delineated below.

(a) Fill factors. The General Assembly directs that the Illinois Commerce Commission shall employ fill factors (the proportion of a facility or element that will be "filled" with network usage) that represent a reasonable projection of actual total usage of the elements in question, in accordance with applicable federal law. The General Assembly finds that existing actual total usage of the elements that affected incumbent local exchange carriers are required to provide to competing local exchange carriers, as reflected in the current actual fill factors for the elements in question, is the most reasonable projection of actual total usage. The Commission, therefore, shall employ current actual fill factors that reflect such existing actual total usage on a going forward basis in establishing cost based rates for such unbundled network elements. In addition, the Commission shall adjust all existing Commission-approved rates for unbundled loops, whether provided on a standalone basis or in combination with other unbundled network elements, that are currently in effect to make such rates consistent with this provision.

(b) Depreciation rates. The General Assembly further directs that the Commission shall employ depreciation rates that are forward-looking and based on economic lives as reflected in the incumbent local exchange carrier's books of accounts as reported to the investment community under the regulations of the Securities and Exchange Commission. Use of an accelerated depreciation mechanism shall be required in all cases. Use of a depreciation rate based on historical rate-of-return regulation derived lives of the elements and

facilities in question shall be prohibited. In addition, the Commission shall adjust all existing Commission-approved rates for unbundled loops, whether provided on a standalone basis or in combination with other unbundled network elements, that are currently in effect to make such rates consistent with this provision.

(c) The rate adjustments required by subsections (a) and (b) of this Section must be completed within 30 days of the effective date of this Section. In the case of any incumbent local exchange carrier that is subject to an alternative regulation plan under Section 13-506.1 at the time this Section becomes effective, in making these rate adjustments, the Commission shall determine the specific required adjustments with respect to fill factors and depreciation lives by employing the models and methodology used to generate the proposed rates submitted by such an incumbent local exchange carrier in ICC Docket 02-0864. The Commission proceedings initiated to establish such adjusted rates shall be deemed interconnection agreement arbitration and approval proceedings under Sections 252(b) and (e) of the federal Telecommunications Act of 1996. Immediately upon conclusion of such proceedings, all existing interconnection agreements in this State of affected incumbent local exchange carriers shall be deemed amended to contain the adjusted rates established in such proceedings. In addition, immediately upon conclusion of such proceedings, all wholesale tariffs, currently effective in this State, of affected incumbent local exchange carriers shall be deemed amended to contain the adjusted rates established in such proceedings. In accordance with these provisions, immediately upon the establishment by the Commission of the adjusted rates covered hereby, each affected incumbent local exchange carrier shall charge such adjusted rates, to the extent applicable, for all of the network element products that are provided to other

carriers, whether those products are provided under an interconnection agreement or a tariff. The proceeding in ICC Docket 02-0864 is hereby abated as of the effective date of this amendatory Act of the 93rd General Assembly.

(d) Notwithstanding anything to the contrary contained in Section 13-505.1 of this Act, unbundled network element rates established in accordance with the provisions of this Section shall not require any increase in any retail rates for any telecommunications service.

(220 ILCS 5/13-409 new)

Sec. 13-409. Application of Sec. 13-408 unbundled network element rates.

(a) During the first 2 years following the effective date of Section 13-408, for the first 35,000 voice grade equivalent access lines used by an individual carrier to provide local exchange service to end users, the monthly recurring rate for the unbundled network elements associated with those lines and leased from an incumbent local exchange carrier to which Section 13-408 applies shall be frozen at the levels in effect immediately prior to the effective date of Section 13-408.

(b) Thereafter, the monthly recurring rates for all unbundled network elements provided by any incumbent local exchange carrier to which Section 13-408 applies shall be the rates established by the Commission in accordance with the provisions of Section 13-408.

(c) If, as of the effective date of Section 13-408 and this Section, an individual telecommunications carrier uses unbundled network elements leased from a specific incumbent local exchange carrier to provide local exchange service over more than 35,000 voice grade equivalent access lines, that carrier must designate the 35,000 voice grade equivalent access lines to which the provisions of subsections (a) and

(b) of this Section apply. If subsequent to such designation, the individual carrier loses the customer served by a designated access line, and therefore no longer leases the unbundled network elements associated with that line, the individual carrier may not designate a different access line to substitute for the lost line. All unbundled network elements leased to provide service over undesignated voice grade equivalent access lines shall be subject to the full monthly recurring rates established by the Commission in accordance with the provisions of Section 13-408.

(d) If, as of the effective date of this Section, an individual carrier uses unbundled network elements leased from a specific local exchange carrier to provide local exchange service over fewer than 35,000 voice grade equivalent access lines, that carrier must designate the access lines to which the provisions of subsections (a) and (b) of this Section apply. If subsequent to such designation, the individual carrier loses the customer served by a designated access line, and therefore no longer leases the unbundled network elements associated with that line, the individual carrier may not designate a different access line to substitute for the lost line. Subject to these limitations, subsequent to the effective date of this Section, such a carrier may designate additional voice grade equivalent access lines to which it wishes the provisions of subsections (a) and (b) of this Section to apply, until the total designated lines equal 35,000. If a subsequently designated line is lost, the carrier will not be permitted to designate a different line to substitute for that lost line. All unbundled network elements leased to provide service over undesignated voice grade equivalent access lines shall be subject to the full monthly recurring rates established by the Commission in accordance with the provisions of Section 13-408.

(e) For purposes of this Section, in determining when an individual telecommunications carrier has reached 35,000 voice grade equivalent access lines, a specific carrier, any affiliate of that carrier, any carrier serving as a sales or marketing agent for that carrier, and any carrier with whom that carrier has a cooperative sales or marketing arrangement all shall be treated as a single individual carrier.

(f) Notwithstanding any other provisions of this Section, access lines provided to payphone service providers are not eligible for the freeze or discount provided for in subsections (a) and (b) of this Section. Accordingly, the provisions of subsections (a) and (b) shall not apply to unbundled network elements that are leased by individual telecommunications carriers to provide local exchange service to payphone service providers.

Section 99. Effective date. This Act takes effect upon becoming law.