

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Petition for Arbitration of Interconnection)
Agreement Between BellSouth) Docket 140156-TP
Telecommunications, LLC d/b/a AT&T Florida and)
Communications Authority, Inc.)

Direct Testimony of Scott McPhee

On Behalf of AT&T Florida

February 16, 2015

ISSUES
33a, 33b, 34,
39a, 39b, 41

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I. INTRODUCTION

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is J. Scott McPhee. My business address is 5001 Executive Parkway, San
4 Ramon, California, 94583.

5 Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

6 A. I am an Associate Director – Wholesale Regulatory Policy & Support for AT&T
7 Services, Inc. I work on behalf of the AT&T incumbent local exchange carriers
8 (“ILECs”) throughout AT&T’s 21-state ILEC territory. I am responsible for
9 providing regulatory and witness support relative to various wholesale products and
10 pricing, supporting negotiations of local interconnection agreements (“ICAs”) with
11 Competing Local Exchange Carriers (“CLECs”) and Commercial Mobile Radio
12 Service (“CMRS”) providers, participating in state commission and judicial
13 proceedings, and guiding compliance with the federal Telecommunications Act of
14 1996 (“1996 Act” or “Act”) and its implementing rules.

15 O. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

16 A. I received my Bachelor of Arts degree with a double major in Economics and
17 Political Science from the University of California at Davis. I began my employment
18 with SBC Communications Inc. in 2000 in the Wholesale Marketing – Industry
19 Markets organization as Product Manager for Reciprocal Compensation throughout
20 SBC's legacy 13-state region. My responsibilities included identifying policy and
21 product issues to assist negotiators and witnesses for SBC's reciprocal compensation
22 and interconnection arrangements, as well as SBC's transit traffic offering. In June of

1 2003, I moved into my current role as an Associate Director in the Wholesale
2 Marketing Product Regulatory organization. In this position, my responsibilities
3 include helping define AT&T ILECs' positions on certain issues for Wholesale
4 Marketing, and ensuring that those positions are consistently articulated in
5 proceedings before state commissions.

6 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY
7 PROCEEDINGS?**

8 A. Yes. I have filed testimony and/or appeared in regulatory proceedings in many of the
9 states where AT&T ILECs provide local service, including Florida.

10 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

11 A. BellSouth Telecommunications, LLC d/b/a AT&T Florida, which I will refer to as
12 AT&T Florida.

13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A. I will discuss AT&T Florida's positions on arbitration Issues 33a, 33b, 34, 39a, 39b
15 and 41.

16 **II. DISCUSSION OF ISSUES**

17 **ISSUE 33a: SHOULD THE PURCHASING PARTY BE EXCUSED FROM PAYING
18 A TAX TO THE PROVIDING PARTY THAT THE PURCHASING
19 PARTY WOULD OTHERWISE BE OBLIGATED TO PAY IF THE
20 PURCHASING PARTY PAYS THE TAX DIRECTLY TO THE
21 GOVERNMENTAL AUTHORITY?**

22 **Affected Contract Provision: GT&C §§ 37.3 and 37.4.**

23 **Q. WHAT IS THE DISPUTE?**

1 A. Federal, state, city, county and municipal governments require that taxes be collected
2 on monies billed to telecommunications end users every month. When a CLEC
3 purchases resale services from AT&T Florida, AT&T Florida bills the CLEC (in this
4 case, Communications Authority (“CA”)) those taxes (and other applicable
5 surcharges), and then remits those taxes (and any other applicable surcharges), to the
6 appropriate authorities. CA, however, proposes to modify this process via an
7 “exemption” and directly pay the governmental body the taxes for the end users it
8 serves via the resale services purchased from AT&T Florida.

9 **Q. WHAT ARE RESALE SERVICES?**

10 A. Resale under section 251(c)(4) of the 1996 Act is an ILEC duty “to offer for resale at
11 wholesale rates any telecommunications service that the carrier provides at retail to
12 subscribers who are not telecommunications carriers.” Therefore, resale services are
13 AT&T Florida’s retail telecommunications services that AT&T Florida sells to CA
14 for resale to CA’s end users. AT&T Florida sells these services to CA at the retail
15 price, less a discount, which in Florida is 21.83% for residential lines and 16.81% for
16 business lines. CLECs may purchase resale services from AT&T Florida as an
17 alternative to serving their customers via their own facilities-based network.

18 When CA purchases resale services from AT&T Florida and resells those
19 services to its end user customer, that customer has a retail relationship with CA for
20 purposes of buying and paying for those services, but the underlying network and call
21 functions are performed by AT&T Florida, and the CA resale customer is assigned a
22 telephone number that belongs to AT&T Florida, *i.e.*, a number that is within a block

1 of numbers (NPA-NXX) that AT&T Florida obtained from the numbering authority.
2 As result, calls to and from the CA resale customer appear on the network as if they
3 terminated to – or originated from – an AT&T Florida end user customer. Thus, for
4 example, reciprocal compensation for calls originated by resale end users is paid by
5 AT&T Florida, because it is AT&T Florida-originated traffic as far as the network is
6 concerned.

7 **Q. ARE RESALE SERVICES SUBJECT TO TAXES AND SURCHARGES?**

8 A. Yes. Everything pertaining to the treatment and billing of a resale line is the same as
9 it is for a retail line, including any applicable taxes and surcharges. Because a resale
10 residential or business line is operationally identical to the corresponding AT&T
11 Florida retail line, AT&T Florida handles all taxes and surcharges the same as it does
12 for its own retail lines. When AT&T Florida bills one of its retail customers, the bill
13 includes all applicable taxes and fees as well as AT&T Florida's retail charges. In the
14 case of a resale line, AT&T Florida bills the CLEC reseller, and just as it includes
15 taxes on its retail bills, AT&T Florida bills the CLEC all applicable taxes and fees as
16 well as AT&T Florida's resale-discounted charges.

17 **Q. MAY THERE BE EXEMPTIONS FROM TAXES AND/OR SURCHARGES?**

18 A. Yes, and AT&T Florida's CLEC website, CLEC Online, explains how a resale CLEC
19 can apply for and receive tax exemptions from the appropriate taxing agency. The
20 website contains the appropriate forms and instructions at
21 <https://clec.att.com/clec/shell.cfm?section=2544>. As it states there, for Florida, a
22 “State issued tax document is required. The CLEC must go to the state and request a

1 certificate and then submit a completed and signed copy to AT&T Tax exemption
2 group in order to be considered for State exemptions.” Once the CLEC has
3 completed this process, AT&T Florida no longer assesses tax charges on the exempt
4 lines. While there is one Federal Excise Tax exemption form, there are multiple state
5 tax exemption forms that may need to be completed and processed.

6 Q. **HAVE THE PARTIES AGREED ON CONTRACT LANGUAGE THAT
7 TREATS PRODUCTS OR SERVICES THAT MAY BE EXEMPT FROM
8 TAX?**

9 A. Yes. The parties have agreed on such language, but the contract provisions that
10 include the agreed language also include disputed language. First, GT&C section
11 37.3 spells out the application and treatment of tax exempt products and services.
12 Section 37.3 reads as follows, with AT&T Florida’s proposed language in bold
13 underscore and CA’s proposed language in bold italics:

14 37.3 To the extent a purchase of products or services under this
15 Agreement is claimed by the purchasing Party to be for resale or
16 otherwise exempt from a Tax, the purchasing Party shall furnish to the
17 providing Party an exemption certificate in the form reasonably
18 prescribed by the providing Party and any other information or
19 documentation required by Applicable Law or the respective
20 Governmental Authority. **Purchasing Party shall have the right to
claim and receive exemption from any governmental tax, fee or
surcharge which it can reasonably prove that it remits directly to the
proper government entity. If an official certificate of exemption does
not exist for a specific tax or government surcharge, the parties agree
that proof of payment of the tax or surcharge directly to the
government entity shall constitute adequate proof of exemption.** Prior
21 to receiving such exemption certificate and any such other required
22 information or documentation, the Providing Party shall have the right
23 to bill, and the Purchasing Party shall pay, Tax on any products or
24 services furnished hereunder as if no exemption were available, subject
25 to the right of the Purchasing Party to pursue a claim for credit or refund
26 of any such Tax pursuant to the provisions of this Section 37.0 and the
27 remedies available under Applicable Law. If it is the position of the
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1 purchasing Party that Applicable Law exempts or excludes a purchase
2 of products or services under this Agreement from a Tax, or that the Tax
3 otherwise does not apply to such a purchase, but Applicable Law does
4 not also provide a specific procedure for claiming such exemption or
5 exclusion or for the purchaser to contest the application of the Tax
6 directly with the respective Governmental Authority prior to payment,
7 then the providing Party **may in its discretion agree not to bill and/or**
8 **not to shall not** require payment of such Tax by the purchasing Party,
9 provided that the purchasing Party (i) furnishes the providing Party with
10 any exemption certificate requested by and in the form reasonably
11 prescribed by the providing Party, (ii) furnishes the providing Party with
12 a letter signed by an officer of the purchasing Party setting forth the
13 basis of the purchasing Party's position under Applicable Law; and (iii)
14 furnishes the providing Party with an indemnification agreement,
15 reasonably acceptable to the providing Party, which holds the providing
16 Party harmless from any Tax, interest, penalties, loss, cost or expenses
17 (including attorney fees) that may be incurred by the providing Party in
18 connection with any claim asserted or actions taken by the respective
19 Governmental Authority to assess or collect such Tax from the
20 providing Party.

21 This language clearly spells out the process CA must follow in order to have a
22 product or service treated as tax-exempt. Once the exemption is in place, AT&T
23 Florida no longer remits tax payments to the governmental agency or bills CA for the
24 taxes for the exempt products or services.

25 Similarly, GT&C Section 37.4 provides a process CA can use to challenge a
26 tax with the appropriate governmental authority:

27 To the extent permitted by and pursuant to Applicable Law, and subject
28 to the provisions of this Section 35.0,¹ the purchasing Party shall have
29 the right to contest with the respective Governmental Authority, or if
30 necessary under Applicable Law to have the providing Party contest (in
31 either case at the purchasing Party's expense) any Tax that the
32 purchasing Party asserts is not applicable, from which it claims an
33 exemption or exclusion, or which it claims to have paid in error;

¹ The references to "this Section 35.0" in section 37.4 are a clerical error in the current version of the ICA. The references will be correct to say "this Section 37.0" in the final version.

1 provided, however, that (i) the purchasing Party shall ensure that no lien
2 is attached to any asset of the providing Party as a result of any contest
3 of a disputed Tax; (ii) with respect to any Tax that could be assessed
4 against or collected from the providing Party by the respective
5 Governmental Authority, the providing Party shall retain the right to
6 determine the manner of contesting such disputed Tax, including but not
7 limited to a decision that the disputed Tax will be contested by pursuing
8 a claim for credit or refund; (iii) except to the extent that the providing
9 Party has agreed pursuant to this Section 35.0 not to bill and/or not to
10 require payment of such Tax by the purchasing Party pending the
11 outcome of such contest, the purchasing Party pays any such Tax
12 previously billed by the providing Party and continues paying such Tax
13 as billed by the providing Party pending the outcome of such contest. In
14 the event that a disputed Tax is to be contested by pursuing a claim for
15 credit or refund, if requested in writing by the purchasing Party, the
16 providing Party shall facilitate such contest (i) by assigning to the
17 purchasing Party its right to claim a credit or refund, if such an
18 assignment is permitted under Applicable Law; or (ii) if an assignment
19 is not permitted, by filing and pursuing the claim on behalf of the
20 purchasing Party but at the purchasing Party's expense. Except as
21 otherwise expressly provided in this Section 35.0, nothing in this
22 Agreement shall be construed to impair, limit, restrict or otherwise
23 affect the right of the providing Party to contest a Tax that could be
24 assessed against or collected from it by the respective Governmental
25 Authority. With respect to any contest of a disputed Tax resulting in a
26 refund, credit or other recovery, as between the purchasing Party and the
27 providing Party, the purchasing Party shall be entitled to the amount that
28 it previously paid, plus any applicable interest allowed on the recovery
29 that is attributable to such amount, and the providing Party shall be
30 entitled to all other amounts. ***Taxes for which the Purchasing Party
31 has provided evidence of direct payment to the Governmental
32 Authority shall not be treated as contested under this provision and
33 shall be entitled to exemption by the Providing Party.***

34 Q. **CA'S PROPOSED LANGUAGE FOR BOTH SECTIONS 37.3 AND 37.4 USES
35 THE WORD "EXEMPTION." AS YOU UNDERSTAND IT, WHAT DOES CA
36 MEAN BY THAT WORD?**

37 A. CA uses the term "exemption" in a manner that is inconsistent with normal usage and
38 with the contract language previously agreed upon by the Parties. In the agreed
39 language, "exemption," for purposes of addressing the application of taxes, means
40 *being released from, or not subject to, an obligation (to pay taxes) by the appropriate*

1 *government authority.* So, for example, a charitable organization may have an
2 exemption from certain taxes in the sense that the government excuses it from paying
3 those taxes. In its proposed language, CA is not using the word in that way. Rather,
4 when CA's language says "exemption," it is referring to a situation where a tax
5 applies (thus, no exemption in the usual sense), but where CA seeks to be excused
6 from paying the tax amount (which AT&T Florida remitted to the government) to
7 AT&T Florida.

8 **Q. SO IS THE DISPUTE REALLY ABOUT THE TAX-EXEMPTION PROCESS,**
9 **AND HOW THE PARTIES WILL GO ABOUT FULFILLING THEIR**
10 **OBLIGATION WITH RESPECT TO THAT PROCESS?**

11 A. No, the issue is whether CA can improperly pay a tax to a government authority that
12 AT&T Florida is supposed to pay – and does in fact pay – on resale services and then
13 obtain reimbursement from AT&T Florida for those taxes.

14 **Q. WHY DO YOU SAY THAT AT&T FLORIDA IS SUPPOSED TO PAY THESE**
15 **TAXES, AND THAT IT WOULD BE IMPROPER FOR CA TO DO SO?**

16 A. Because the Parties have agreed on language in GT&C section 37.1 that clearly
17 delineates each Party's responsibilities with respect to taxes, and section 37.1 says:
18 Except as otherwise provided in this Section, with respect to any
19 purchase of products or services under this Agreement, if any Tax is
20 required or permitted by Applicable Law to be billed to and/or collected
21 from the purchasing Party by the providing Party, then: (i) the
22 providing Party shall have the right to bill the purchasing Party for such
23 Tax; (ii) the purchasing Party shall pay such Tax to the providing Party;
24 and (iii) **the providing Party shall pay or remit such Tax to the**
25 **respective Governmental Authority.** Taxes shall be billed as a
26 separate item on the invoice. Nothing shall prevent the providing Party
27 from paying any Tax to the appropriate Governmental Authority prior to
28 the time: (i) it bills the purchasing Party for such Tax, or (ii) it collects
29 the Tax from the purchasing Party. (Emphasis added.)

1 The taxes we are talking about are in fact “permitted by Applicable Law to be
2 billed to and/or collected from the purchasing Party [CA] by the providing Party
3 [AT&T Florida].” Consequently, CA and AT&T Florida have agreed that AT&T
4 Florida is to pay the taxes to the governmental authority and pass the charges through
5 to CA. CA’s proposed language for sections 37.3 and 37.4 would nullify what the
6 Parties have already agreed upon, and so is an improper attempt to renege on that
7 agreement.

8 **Q. WHAT IF THE PARTIES HAD NOT ALREADY AGREED ON GT&C
9 SECTION 37.1?**

10 A. CA’s position would still be unreasonable. As I have explained, AT&T Florida pays
11 and passes through taxes on resale lines in the same way as it does on retail lines,
12 except that it passes the taxes through to the CLEC rather than the AT&T Florida
13 retail customer. And for good reason, since resale lines are in all operational respects
14 identical to retail lines. To the best of my knowledge, every reseller in Florida is fine
15 with this arrangement, and there is no chance of any CLEC being double-billed under
16 this arrangement, or double-paying, as long as the CLEC does not foolishly pay taxes
17 that AT&T Florida is supposed to pay. CA is asking the Commission to require
18 AT&T Florida to revamp its billing systems to accommodate CA alone, but with no
19 sound justification. All CA has to do if it wants to avoid any risk of double-payment
20 is to let AT&T Florida pay the taxes, as the parties have in fact agreed in section 37.1.

21 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

22 A. The Commission should reject CA’s proposed additions to GT&C Sections 37.3 and
23 37.4.

1 **ISSUE 33b: IF COMMUNICATIONS AUTHORITY HAS BOTH RESALE
2 CUSTOMERS AND FACILITIES-BASED CUSTOMERS, SHOULD
3 COMMUNICATIONS AUTHORITY BE REQUIRED TO USE AT&T
4 FLORIDA AS A CLEARINGHOUSE FOR 911 SURCHARGES WITH
5 RESPECT TO RESALE LINES?**

6 **Affected Contract Provision: E911 Attachment § 5.2.2**

7 **Q. WHAT IS THE DISPUTE?**

8 A. Appendix E911 provides terms and conditions under which AT&T Florida will
9 provide CA with access to E911 services where AT&T Florida is the E911 network
10 service provider. E911 services often include surcharges or fees payable to an E911
11 agency for the provisioning of E911 services in a specific community. The dispute is
12 over which carrier should remit those surcharges and fees when AT&T Florida
13 provides CA with resale services. As the resale provider, AT&T Florida provides a
14 complete product, including the billing of appropriate E911 surcharges, for a set price
15 (retail, less the resale discount as discussed above). Consequently, AT&T Florida is
16 the appropriate party to remit these charges to the taxing authority. CA, on the other
17 hand, proposes contract language to entitle CA to aggregate its facilities-based and its
18 resale line data for purposes of CA remitting E911 surcharges and fees.

19 **Q. IS THIS ISSUE SIMILAR TO ISSUE 33a THAT YOU JUST DISCUSSED?**

20 A. Yes, it is. Instead of addressing taxes, this dispute addresses surcharges associated
21 with E911 services. And just as I have described with respect to Issue 33a, CA here
22 proposes language that would excuse CA from paying a portion of AT&T Florida's
23 resale bill. CA has proposed that AT&T Florida cease paying E911 surcharges in
24 those areas where CA is both a reseller and a facilities-based CLEC, so that CA

1 would then pay E911 surcharges for *all* of its retail lines, whether provisioned via its
2 facilities-based network, or via resale from AT&T Florida.

3 **Q. WHAT IS THE DISPUTED LANGUAGE?**

4 A. The disputed language is in section 5.2.2 of the 911/E911 Attachment, which reads as
5 follows with the bold italics language proposed by CA and opposed by AT&T
6 Florida:

7 5.2.2 For Resellers, the ILEC shall serve as a clearinghouse between
8 Resellers and PSAPs² except where state law requires Reseller to collect
9 and remit directly to the appropriate 911 Authority, ***or in the case of a***
10 ***Facility based CLEC which also has resale service from AT&T-***
11 ***21STATE, and which remits and reports its facility-based and resale-***
12 ***based data in the aggregate to the 911 Customer.*** The Parties agree
13 that:

14 5.2.2.2 AT&T SOUTHEAST REGION 9-STATE will provide the 911
15 Customer a monthly settlement letter which provides the total number
16 of access lines broken down into residence and business line totals only.
17 If state statutes require a break out of Reseller information, the AT&T
18 SOUTHEAST REGION 9-STATE shall include this information upon
19 request by the 911 Customer. ***In the case of a facility-based CLEC***
20 ***which also has resale service, and which remits and reports its facility-***
21 ***based and resale-based data in the aggregate to the 911 Customer,***
22 ***AT&T SOUTHEAST REGION 9-STATE shall omit CA's resale lines***
23 ***from its own reporting to 911 Customer. If CA claims exemption from***
24 ***911 surcharges under this provision, CA shall be solely responsible for***
25 ***remitting and reporting of 911 surcharges to the 911 Customer.***

26 **Q. WHY IS IT APPROPRIATE FOR AT&T FLORIDA TO REMIT E911**
27 **SURCHARGES ASSOCIATED WITH RESALE LINES?**

28 A. As I described in Issue 33a, whenever AT&T Florida provides a resale product or
29 service, the entirety of that product or service is identical to AT&T Florida's
30 corresponding retail offering, with the exception that the resold service may be

² A PSAP (Public Safety Answering Point) is a call center that answers emergency calls within a particular geographic area.

1 rebranded as that of the resale purchasing CLEC. AT&T Florida treats all resale
2 products and services, sold to all carriers, in the same way, and there is no reason for
3 a resale purchaser to require that AT&T Florida parse its resale billing in any way.
4 Resale services are sold as a complete product or service; all rates, taxes, surcharges
5 and fees are included in the billing in the same way as they are included in AT&T
6 Florida's retail offerings.

7 **Q. IN ITS COMMENTS ON THIS ISSUE, CA ASSERTED THAT IT CANNOT
8 SEPARATE OUT ITS FACILITIES-BASED LINES FROM ITS RESALE
9 LINES FOR PURPOSES OF DETERMINING CA'S E911 SURCHARGE
10 OBLIGATIONS FOR ITS FACILITIES-BASED LINES.³ SHOULDN'T CA
11 BE CAPABLE OF KNOWING THE LOCATION OF EACH OF ITS
12 CUSTOMERS, REGARDLESS OF WHETHER THEY ARE FACILITIES-
13 BASED OR RESALE-PROVISIONED?**

14 A. Yes. A telecommunications company should have the technical and managerial
15 resources in place to know who it is serving and where its customers reside. It should
16 also know which of its customers are facilities-based and which are resale. It appears,
17 however, based on CA's Comments, that CA is uncertain to whom it is providing
18 resale services, as well as the location of its resale customers. Specifically, CA states,
19 "AT&T does not provide any way for CA to determine the county for each resale line
20 for which AT&T bills the E911 surcharge on its bill." This statement is puzzling,
21 because if CA does not know where its resale customers reside, how can CA possibly
22 know the appropriate surcharge amounts to bill its customers, and what amounts to
23 remit to each of the different municipalities? Furthermore, it would seem that CA

³ When I refer to CA's Comments, I mean the comments on each issue that CA included in Exhibit B to its Petition for Arbitration.

1 should be able to discern from its billing records which of its customers are facilities-
2 based and which are resale – which in turn would allow CA to remit E911 surcharges
3 only on the lines of its facilities-based customers.

4 **Q. DOES AT&T FLORIDA PROVIDE GUIDANCE FOR CLECS ON EACH**
5 **PARTY'S RESPONSIBILITIES FOR REMITTING E911 SURCHARGES**
6 **AND FEES?**

7 A. Yes. In AT&T Florida's online resource guide for CLECs, CLEC Online, AT&T
8 Florida provides E911 technical documents, including one titled "CLEC Users Guide
9 to E911 for Facilities Based Providers."⁴ Section 2 is titled Roles and
10 Responsibilities and states in pertinent part:

11 **CLEC Responsibilities**

- 12 1. The CLEC has a responsibility to contact the county / parish to determine the
13 following information:
14
15 ◦ Default ESN (The default ESN is a 3-digit number that translates to a specific
16 PSAP where calls are routed in case the CLEC cannot deliver ANI from their
17 switch to the AT&T E911 tandem).
18
19 ◦ Surcharge information - Surcharge information refers to the money billed by
20 the CLEC on behalf of the county / parish to their customers for providing
21 E911 service. The CLEC must also obtain information from the county /
22 parish in order to remit these surcharges back to the county / parish. A list of
23 county/parish coordinators can be found on the NENA Website at
24 <http://www.nena.org>. Click on Chapters and Contacts for the state for which
25 you need information.
26
27

28 ****NOTE:**

⁴ The document can be found at
<https://clec.att.com/clec/hb/shell.cfm?section=735&redirectsection=735> under the
“Technical” heading, it is in the link “SE 911Prod User Guide.” Direct link to the document:
https://clec.att.com/clec_documents//unrestr/hb/Nb/735//SE%20clec-user-guide-911%20rev%20Jan%202013.doc

- 1 ■ **Resale CLECs:** AT&T will bill Resale Providers the applicable 911/E911
2 surcharges who will remit to AT&T; AT&T will then remit surcharges to the
3 appropriate county / parish.

4 This guidance, which addresses each party's obligations with respect to payment of
5 E911 surcharges, is available to all carriers that purchase E911 services from AT&T
6 Florida. Consistent with those statements of responsibility, AT&T Florida bills the
7 resale purchaser (CA, in this instance), and then remits the charges to the appropriate
8 E911 government authority.

9 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

10 A. The Commission should reject CA's proposed additions to E911 section 5.2.2

11 **ISSUE 34: SHOULD COMMUNICATIONS AUTHORITY BE REQUIRED TO
12 INTERCONNECT WITH AT&T FLORIDA'S E911 SELECTIVE
13 ROUTER?**

14 **Affected Contract Provisions: E911 Attachment § 3.3.2; §§ 4.1-4.3**

15 **Q. WHAT IS THE ISSUE?**

16 A. The issue is whether or not CA can obtain E911 services from a provider other than
17 AT&T Florida in areas where AT&T Florida is the E911 service provider.

18 **Q. DOES ATTACHMENT 5 – 911-E911 REQUIRE CA TO USE AT&T
19 FLORIDA TO CONNECT TO ALL 911/E911 SERVICES IN THE STATE OF
20 FLORIDA?**

21 A. No. Attachment 5 only applies where AT&T Florida is the authorized E911 service
22 provider, that is, where AT&T Florida is providing E911 network services to an E911
23 customer (such as a municipality or local government) and/or Public Safety

1 Answering Point (“PSAP”).⁵ E911 customers contract with a service provider to
2 provide their E911 network services, and all other carriers connect to that 911 service
3 provider for purposes of routing their 911 calls to the PSAP. AT&T Florida is the
4 designated 911/E911 service provider for many E911 customers. Other E911
5 customers in Florida contract with different service providers, such as Intrado or
6 CenturyLink. If CA has end user customers located in the E911 service areas served
7 by one of those carriers, then CA would presumably obtain those E911 services from
8 that carrier.

9 **Q. WHAT WOULD BE THE EFFECT OF CA’S PROPOSED CHANGES TO**
10 **SECTIONS 3.3.2 AND 4.1 – 4.3 OF APPENDIX E911?**

11 A. CA’s proposed language would allow CA to somehow provision connectivity to
12 AT&T Florida’s E911 customers without connecting through AT&T Florida’s
13 established E911 network for those customers. Specifically, CA proposes that it can
14 obtain E911 interconnection from some other third party service provider.

15 **Q. HOW DOES A CARRIER PROVIDE E911 NETWORK SERVICES FOR A**
16 **PSAP?**

17 A. A carrier that provides E911 network services, such as AT&T Florida, typically
18 provides a complete service platform. Three integrated components provide the
19 routing and transmission of an E911 call. The first is a Selective Router (“SR”),
20 which is a specialized switch used to route a 911 call to the proper PSAP based upon
21 the number and location of the call. Second, the Automatic Location Identification
22 (“ALI”) (or E911) database contains end user information, such as the caller’s

⁵ For purposes of my discussion here, “E911 customers” and “PSAPs” are interchangeable.

1 telephone number, the address/location of the telephone, and sometimes additional
2 emergency services information that is automatically displayed at the PSAP during an
3 emergency call. The third component is the network facilities used to connect the
4 PSAP to the SR and to the ALI database.

5 **Q. HOW DO OTHER CARRIERS, SUCH AS CLECS, ROUTE THEIR E911
6 CALLS TO PSAPS WHERE AT&T FLORIDA IS THE E911 NETWORK
7 SERVICE PROVIDER?**

8 A. In general, E911 calls are sent over the interconnection that each carrier maintains
9 with AT&T Florida. More specifically, when a CLEC end user dials 911, the call is
10 routed from that end user's provider's end office switch to AT&T's Selective Router,
11 which is housed at a designated AT&T Florida tandem switch (E911 tandem). That
12 emergency call contains Automatic Number Information ("ANI") within the SS7 data
13 associated with the call, and the SR performs a lookup of the ANI information in
14 order to find the associated Emergency Services Number ("ESN") via a Telephone
15 Number/ESN translation table. Based on the ESN, the call is then switched, via
16 dedicated trunk, to the appropriate PSAP. Once the PSAP receives the call, ANI
17 information is sent to the ALI processor for retrieval of the end user subscriber's
18 information, which is then displayed on a screen at the PSAP for use by the E911
19 operator. From there, and based upon the caller's needs, the PSAP operator may
20 transfer the call to the appropriate responding agency, *e.g.*, fire, police or ambulance.

21 **Q. WHERE AT&T FLORIDA IS THE E911 NETWORK SERVICE PROVIDER
22 FOR AN E911 CUSTOMER, ARE THERE ANY OTHER E911 NETWORK
23 SERVICE PROVIDERS SERVING THAT SAME CUSTOMER FOR
24 LANDLINE CALLS?**

1 A. No. And I really can't see why a PSAP would want or require duplicative E911
2 network service providers for the same location. As I have described, E911 network
3 service providers provide a robust and complete E911 platform; there is no need for
4 an E911 customer to incur additional expense or complexity by having multiple
5 duplicative networks in place.

6 Q. **IS IT POSSIBLE FOR A CARRIER SUCH AS CA TO USE A THIRD-PARTY
7 “AGGREGATOR” TO DELIVER ITS END USER 911 CALLS TO THE
8 APPROPRIATE PSAP?**

9 A. Yes, it is possible. Essentially, an aggregator for E911 traffic is a third-party
10 middleman between CA's network and AT&T Florida's E911 tandem, which adds an
11 additional layer of complexity to an E911 call destined to a PSAP.

12 Q. **WHAT WOULD BE THE CONSEQUENCES IF CA DID NOT ROUTE ITS
13 END USERS' 911 CALLS DIRECTLY TO AT&T FLORIDA, AS CA'S
14 PROPOSED LANGUAGE CONTEMPLATES?**

15 A. As the Florida 911 system has been designed, a 911 call should be delivered to the
16 correct PSAP with the information about the caller's location transmitted
17 expeditiously. However, every time another carrier is introduced into a call sequence,
18 another point of potential failure is introduced as well. The danger is that calls might
19 be delivered to the wrong PSAP or without the caller's location, which could delay
20 the dispatch of emergency assistance. Additionally, there are no mechanisms by
21 which to ensure that third party 911 aggregators (*e.g.*, Intrado) have sufficient
22 trunking capacity. Insufficient trunking capacity could result in call blockage (*i.e.*, in
23 911 calls failing to complete). Finally, 911 aggregation increases the risk of call
24 blockage due to a trunking maintenance problem of the trunking provider and/or
25

1 intermediate carriers that switch and/or transport the 911 traffic for eventual
2 connection to AT&T Florida's selective router and the responsible PSAP.

3 **Q. ARE THERE ANY ADDITIONAL RISKS?**

4
5 A. Yes. While it is possible to mitigate the risks of 911 call aggregation, if an aggregator
6 mixes different types of traffic on the same trunk group *e.g.*, wireless, VoIP, and
7 traditional landline, any default routing requested by the PSAP could be negated,
8 resulting in misrouted 911 calls. In addition, call aggregation increases the difficulty
9 of tracing a call to the originator in an emergency situation when call data is not
10 available and/or not correct in the E911 database.

11 **Q. YOU MENTIONED DEFAULT ROUTING REQUESTED BY PSAPS.
12 PLEASE EXPLAIN.**

13
14 A. Default routing is where a PSAP pre-arranges to alternately route its traffic to another
15 PSAP in the event that the first PSAP is out of service (*e.g.*, night closedown) or all of
16 its 911 trunks are in use. That second PSAP will have an established method of
17 handling those emergency calls, and the two PSAPs work together to handle these
18 situations. If the second PSAP were to receive a call that it was ill-prepared to deal
19 with, then additional time would be required to route the 911 caller to the correct
20 PSAP in order to dispatch first responders from the correct jurisdiction. Each PSAP
21 that has default routing established as part of its 911 service adds complexity and cost
22 to providing 911 service, because trunk groups for each default-routed PSAP must
23 use unique routes. A PSAP may even have different default routes for wireless traffic

1 than it does for wireline traffic, which is under the control of the given PSAP, not
2 AT&T Florida.

3 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 34?**

4
5 A. It should approve AT&T Florida's proposed language, which requires that CA
6 directly connect with AT&T Florida's Selective Router in those areas where AT&T
7 Florida is an E911 agency's designated network service provider.

8 **ISSUE 39a: SHOULD THE ICA STATE THAT COMMUNICATIONS
9 AUTHORITY MAY USE A THIRD PARTY TANDEM PROVIDER TO
10 EXCHANGE TRAFFIC WITH THIRD PARTY CARRIERS?**

11 **Affected Contract Provisions: Network Interconnection Att. § 4.1.6**
12

13 **Q. WHAT IS THE DISAGREEMENT?**

14 A. CA has proposed language for section 4.16 of the Network Interconnection
15 Attachment concerning CA's use of third party tandem providers to exchange traffic
16 with carriers that are not directly connected with CA. Specifically, CA proposes:

17 ***4.1.6. Nothing herein shall prohibit CLEC from utilizing third-party
18 tandem providers to exchange call traffic with any carrier not directly
19 connected to CLEC's network.***

20 AT&T Florida opposes this language, because it is at best unnecessary and at worst
21 unlawful.

22 **Q AS YOU UNDERSTAND IT, WHAT DOES CA MEAN BY A "THIRD-PARTY
23 TANDEM PROVIDER"?**

24 A. That is a carrier, other than CA and AT&T Florida, that provides switching and
25 transport services that enable carriers that are not directly interconnected with each
26 other to exchange traffic via the third party tandem provider. In general terms, then,

1 CA is proposing for the ICA to declare that nothing in the ICA prevents CA from
2 making arrangements with such a tandem provider that would permit CA to exchange
3 traffic with other carriers with which CA has no direct interconnection.

4 **Q. WHAT IS IT ABOUT CA'S PROPOSED LANGUAGE THAT IS
5 OBJECTIONABLE TO AT&T FLORIDA?**

6 A. The language is vague, and some possible interpretations of the language are contrary
7 to law. The best way for me to explain is to begin with a statement of some basic
8 principles that apply here:

- 9 1. CA is free to send traffic from its network to AT&T Florida through a third
10 party tandem provider if CA chooses to do so.
- 11 2. If CA does send traffic to AT&T Florida through a third party tandem
12 provider, it is exchanging traffic with AT&T Florida by means of *indirect*
13 interconnection. Indirect interconnection is pursuant to section 251(a)(1)
14 of the 1996 Act, and so is not typically addressed in interconnection
15 agreements and is definitely not subject to arbitration under section 252.⁶
- 16 3. CA is also free to designate a third party tandem for carriers that are not
17 directly interconnected with CA to send their traffic to so that the tandem
18 provider can route the traffic to CA. Again, that is *indirect* interconnection
19 between the originating carriers and CA, and so is not a proper subject for
20 the CA/AT&T Florida ICA or this arbitration.
- 21 4. Whether or not CA designates a third party tandem through which carriers
22 can route their traffic to CA, AT&T Florida has the right to send traffic
23 from its network directly to CA via the direct interconnection that is the
24 subject of the ICA the Commission is arbitrating.
- 25 5. Consequently, if CA designates a third party tandem through which carriers
26 can route their traffic to CA, AT&T Florida is not required and cannot
27 lawfully be required to send traffic to CA via that tandem.

⁶ See 47 U.S.C. § 251(c)(1), stating that incumbent LEC is required to negotiate terms and conditions of an agreement to fulfill the duties imposed by 251(b) and 251(c), but not 251(a).

1 **Q. IN LIGHT OF THOSE PRINCIPLES, WHAT IS AT&T FLORIDA'S**
2 **OBJECTION TO CA'S PROPOSED LANGUAGE?**

3 A. As I said, the language is vague. It could be read in a way that is consistent with the
4 above principles, but it could also be read in ways that are not. The language should
5 therefore be excluded from the ICA – or it must be modified to eliminate possible
6 interpretations that would be improper.

7 **Q. HOW COULD CA'S LANGUAGE BE READ IN A WAY THAT IS**
8 **CONSISTENT WITH THE PRINCIPLES YOU STATED ABOVE?**

9 A. If all CA means is that it can send its traffic to AT&T Florida through a third party
10 tandem provider and that carriers with which it is not directly interconnected (which
11 would not include AT&T Florida) can send their traffic to CA through that third party
12 tandem provider if they choose to do so, then AT&T Florida does not disagree with
13 that – though even language that says only that would not properly be included in the
14 ICA.

15 **Q. WHY NOT?**

16 A. In the first place, there is no reason for such language. Nothing in the ICA could
17 possibly be read to prohibit CA from doing those things, so there is no need to say
18 that nothing in the ICA prohibits it. In addition, indirect interconnection, as I stated
19 above, is not a proper subject for an ICA.

20 **Q. HOW COULD CA'S LANGUAGE BE READ TO PRODUCE IMPROPER**
21 **RESULTS?**

22 A. Two possibilities come to mind. First, CA might claim in the future that its language
23 means that once CA arranges for carriers to send their traffic to CA through a third

1 party tandem provider, AT&T Florida can no longer transit to CA traffic that carriers
2 choose to send to CA through AT&T Florida rather than through CA's chosen third
3 party transit provider. That would be unacceptable. If AT&T Florida has an
4 interconnection agreement with Carrier X that allows Carrier X to send its traffic
5 through AT&T Florida to other carriers, then AT&T Florida is going to abide by that
6 contract. Consequently, if Carrier X sends AT&T Florida a call that is destined for
7 CA, AT&T Florida is going to route the call to CA. Language should not be included
8 in the parties' ICA that CA might contend requires AT&T Florida not to route other
9 carriers' traffic to CA.

10 Q. **WHAT IS AT&T FLORIDA'S OTHER CONCERN ABOUT CA'S
11 LANGUAGE?**

12 A. This may seem far-fetched, but it is possible that CA might insist that AT&T Florida
13 send *its* traffic to CA through CA's designated third party tandem provider. And that
14 would certainly be improper, because AT&T Florida is entitled to send its traffic to
15 CA through the direct interconnection that will be established between AT&T Florida
16 and CA pursuant to their ICA.

17 Q. **WHY DO YOU SAY IT MAY SEEM FAR-FETCHED THAT CA WOULD
18 INSIST ON AT&T FLORIDA SENDING ITS TRAFFIC THROUGH THE
19 THIRD PARTY TANDEM PROVIDER?**

20 A. Because CA's proposed language talks about CA using a third party tandem provider
21 to "exchange call traffic with any carrier not directly connected to [CA's] network."
22 That should not include AT&T Florida, which will presumably be directly connected
23 to CA's network pursuant to the ICA the parties are arbitrating. After all, CA is
24 asking the Commission to arbitrate a slew of issues that relate to direct

1 interconnection,⁷ so CA must be intending to directly interconnect with AT&T
2 Florida. Indeed, agreed language on the very first page of the ICA says, “**WHEREAS**,
3 the Parties want to Interconnect their networks at mutually agreed upon Points of
4 Interconnection to provide Telephone Exchange Service and Exchange Access to
5 residential and business End Users over their respective Telephone Exchange Service
6 facilities in the state or states which are subject to this Agreement.” That's direct
7 interconnection.

8 **Q. IF IT APPEARS CLEAR THAT THE PARTIES' NETWORKS WILL BE**
9 **DIRECTLY INTERCONNECTED, WHY WORRY ABOUT CA CLAIMING**
10 **THAT ITS LANGUAGE REQUIRES AT&T FLORIDA TO SEND ITS**
11 **TRAFFIC TO CA THROUGH A THIRD PARTY TANDEM PROVIDER?**

12 A. Because I don't know that the ICA absolutely *requires* CA to establish direct
13 interconnection with AT&T Florida, and because it makes no sense to knowingly
14 include vague language in the ICA that could do mischief in the future.

15 **Q. BUT IF CA IN FACT DOES NOT ESTABLISH DIRECT**
16 **INTERCONNECTION WITH AT&T FLORIDA, CAN'T CA REQUIRE**
17 **THAT AT&T FLORIDA SEND ITS TRAFFIC TO CA THROUGH A THIRD**
18 **PARTY TANDEM PROVIDER OF CA'S CHOOSING?**

19 A. No. AT&T Florida has every right to deliver its traffic to CA directly if it wishes. I
20 discuss this further in connection with Issue 39b below.

21 **Q HOW SHOULD THE COMMISSION RULE ON CA'S PROPOSED SECTION**
22 **4.1.6?**

23 A. The Commission should reject CA's proposed language. To the extent that the
24 language accurately reflects that CA is free to send its traffic to AT&T Florida

⁷ This includes Issues 14a, 14b, 35, 37, 38, 40, 41 and 42.

1 indirectly and to make arrangements with a third party tandem provider that allows
2 other carriers to send their traffic to CA indirectly, there is no need for the language.
3 And to the extent that the language could be read to require AT&T Florida to send its
4 traffic to CA indirectly, or to prohibit AT&T Florida from delivering to CA traffic
5 originated by other carriers and routed to CA through AT&T Florida, the language is
6 unlawful.

7 **Q. YOU STATED EARLIER THAT AN ALTERNATIVE WOULD BE TO
8 MODIFY CA'S LANGUAGE SO THAT IT WOULD NOT BE SUSCEPTIBLE
9 TO IMPROPER READINGS. CAN YOU GIVE AN EXAMPLE?**

10 A. Yes. AT&T Florida would not object to a version of section 4.1.6 that reads as
11 follows:

12 4.1.6 Nothing herein shall prohibit CA from utilizing third-party
13 tandem providers to send outbound call traffic (*i.e.*, traffic from, rather
14 than to, CA) to any carrier not directly connected to CA's network.

15 **ISSUE 39b: SHOULD THE ICA PROVIDE THAT EITHER PARTY MAY
16 DESIGNATE A THIRD PARTY TANDEM AS THE LOCAL HOMING
17 TANDEM FOR ITS TERMINATING TRAFFIC BETWEEN THE
18 PARTIES' SWITCHES THAT ARE BOTH CONNECTED TO THAT
19 TANDEM?**

20 **Affected Contract Provisions:** Network Interconnection Att. § 4.3.1
21

22 **Q. PLEASE EXPLAIN WHAT ISSUE 39b IS ABOUT.**

23 A. It is closely related to 39a. Network Interconnection section 4.3.1 reads as follows,
24 with the first part agreed and the remainder, shown in bold italics, proposed by CA
25 and opposed by AT&T Florida:

26 4.3.1 When CLEC Offers Service in a Local Exchange Area or LATA,
27 the following trunk groups described in this Section 4.3 shall be used to
28 transport traffic between CLEC End Users and AT&T-21STATE End

1 Users. *If a third-party tandem connects the switches operated by both*
2 *parties, then either party shall be entitled to designate such third party*
3 *tandem as the Local Homing Tandem for its terminating traffic*
4 *between the switches which are connected by the third party tandem,*
5 *and neither party shall be obligated to pay the other for tandem*
6 *switching provided by the third party.*

7 **Q. WHAT IS OBJECTIONABLE ABOUT CA'S PROPOSED LANGUAGE?**

8 A. Though the language is ambiguous for a reason I will explain, it appears to allow CA
9 to require AT&T Florida to send traffic to CA via a third party tandem provider even
10 though AT&T Florida is entitled to send the traffic directly to CA.

11 **Q. IN WHAT WAY IS CA'S LANGUAGE VAGUE?**

12 A. Because it says a carrier can designate a third-party tandem as the Local Homing
13 Tandem for “its terminating traffic.” The ICA does not define “terminating traffic,”
14 however, and I have heard people in the industry use that term in two very different
15 ways. When people refer to a carrier’s “terminating traffic,” they sometimes mean
16 traffic that the carrier is terminating (*i.e.*, incoming traffic destined for the carrier’s
17 end user customers) and they sometimes mean exactly the opposite – traffic that the
18 carrier needs to have terminated (*i.e.*, outgoing traffic originated by the carrier’s end
19 user customers that needs to be terminated by another carrier). I believe that CA is
20 using the word in the former sense, so that when CA refers to “its [one of the Parties]
21 terminating traffic,” it means traffic that that Party will terminate to its end user
22 customers. If that is what CA means, its language is contrary to law.

23 **Q. WHY?**

1 A. Because it would require AT&T Florida to route its traffic to CA indirectly, through
2 CA's designated third party tandem provider. CA has no right under the 1996 Act to
3 require AT&T Florida to do that. Section 251(c)(2) of the Act sets forth the ILEC's
4 obligations with respect to interconnection, including 251(c)(2)(B), which requires
5 AT&T Florida to provide CA with interconnection "at any technically feasible point
6 within [AT&T Florida's] network." In addition, for the purpose of the
7 interconnection requirement established by section 251(c)(2), the FCC defined
8 "interconnection" in 47 C.F.R. § 51.5 as the "linking of two networks for the mutual
9 exchange of traffic." AT&T Florida fulfills its interconnection obligations by
10 interconnecting directly with CA, and has no further obligation – and certainly no
11 obligation that is properly addressed in an interconnection agreement – to
12 interconnect indirectly with CA.⁸

13 Q. **IS THERE ANYTHING ELSE WRONG WITH CA'S PROPOSED
14 LANGUAGE?**

15 A. Yes. This is a fairly minor point, but CA's language uses the term "Local Homing
16 Tandem." Terms that are capitalized in the ICA are defined terms, but there is no
17 definition for "Local Homing Tandem" in the ICA, and CA does not propose one.
18 Although I think I know what CA means by "Local Homing Tandem," the use of
19 terms with undefined meanings that may be susceptible to differing interpretations
20 should be avoided.

⁸ As I discussed in connection with Issue 39a, indirect interconnection is the subject of section 251(a) of the 1996 Act, and the duties imposed by 251(a) – unlike the duties imposed by 251(b) and 252(c) – are duties that an ILEC has no duty to negotiate for inclusion in an ICA.

1 **Q HOW SHOULD THE COMMISSION DECIDE THIS DISPUTE?**

2 A. The Commission should reject CA's proposed language for Net. Int. section 4.3.1.

3 **Q. IS THERE A VARIANT OF CA'S PROPOSED LANGUAGE THAT IS NOT**
4 **DEFECTIVE IN THE WAYS YOU HAVE DISCUSSED?**

5 A. Yes. Although there is no need for such language, AT&T Florida would have no
6 objection to:

7 4.3.1 When CA Offers Service in a Local Exchange Area or LATA, the
8 following trunk groups described in this Section 4.3 shall be used to
9 transport traffic between CA End Users and AT&T-21STATE End
10 Users. If a third-party tandem connects the switches operated by both
11 Parties, then either Party shall be entitled to transmit traffic from its
12 switch to the other Party's switch via such third-party tandem, and
13 neither Party shall be obligated to pay the other for tandem switching
14 provided by the third party.

15 This retains the agreed first sentence of section 4.3.1; eliminates the ambiguous term
16 “terminating traffic”; eliminates the undefined term “Local Homing Tandem”; clearly
17 and properly allows each Party to deliver its traffic to the other indirectly if it so
18 chooses; and does not improperly require either party to deliver its traffic indirectly to
19 the other.

20 **ISSUE 41: SHOULD THE ICA INCLUDE COMMUNICATION AUTHORITY'S**
21 **LANGUAGE PROVIDING FOR SIP VOICE-OVER-IP TRUNK**
22 **GROUPS?**

23 **Affected Contract Provision: Network Interconnection Att. § 4.3.11.**

24 **Q. WHAT ARE “SIP VOICE-OVER-IP TRUNK GROUPS” TO WHICH THIS**
25 **ISSUE REFERS?**

26 A. Trunks are communications pathways from one point to another. The term “SIP
27 Voice-over-IP trunk groups” is used in CA's proposed language that gave rise to this
28 issue. What CA means by that term, I believe, is trunk groups that carry, or that are

1 capable of carrying, traffic in Internet Protocol (“IP”) format, as opposed to Time
2 Division Multiplexing (“TDM”) format, which is the format that has traditionally
3 been used on the public switched telephone network in general and that is currently
4 used on AT&T Florida’s network.

5 **Q. WHAT IS THE DIFFERENCE BETWEEN TDM FORMAT AND IP
6 FORMAT?**

7 A. When traffic is in TDM format, it is transported over dedicated circuits using SS7
8 signaling. When traffic is in IP format, in contrast, a given message is not sent over
9 any one circuit. Instead, the signals are divided into packets and each packet is sent
10 over the fastest available route in a packet switched network. The packets are then
11 reassembled at the receiving end.

12 **Q. DOES AT&T FLORIDA EXCHANGE TRAFFIC WITH ANY CARRIER IN IP
13 FORMAT?**

14 A. No. AT&T Florida’s network is a TDM network, and AT&T Florida currently
15 exchanges traffic with other carriers, including its affiliates, only in TDM format.
16 Thus, AT&T Florida currently has no IP interconnection with any carrier.

17 **Q. DOES THE 1996 ACT REQUIRE INCUMBENT LECS LIKE AT&T
18 FLORIDA TO INTERCONNECT WITH OTHER CARRIERS IN IP
19 FORMAT?**

20 A. That is an open question that is currently pending at the FCC.⁹ AT&T Florida
21 maintains that the 1996 Act does not require IP interconnection. Some carriers agree

⁹ In addition to the FCC, the US House of Representatives Energy & Commerce Committee has initiated an inquiry into modernizing the Act. The Committee’s stated purpose: “The primary body of law regulating these industries was passed in 1934 and while updated periodically, it has not been modernized in 17 years. Changes in technology and the rate at

1 with AT&T Florida, and others disagree. Presumably, the FCC will decide the
2 matter. In any event, this Commission need not do so in order to resolve Issue 41.

3 **Q. IS COMMUNICATIONS AUTHORITY PROPOSING THAT THE**
4 **COMMISSION REQUIRE AT&T FLORIDA TO PROVIDE IP**
5 **INTERCONNECTION OR SIP-OVER-IP TRUNK GROUPS WHEN THE**
6 **PARTIES' ICA GOES INTO EFFECT?**

7 A. No.

8 **Q. THEN WHAT IS THE PARTIES' DISAGREEMENT CONCERNING IP**
9 **INTERCONNECTION?**

10 A. CA proposes language for the ICA that states that if AT&T Florida establishes IP
11 interconnection with another carrier in the future, AT&T Florida must provide IP
12 interconnection to CA on the same terms. AT&T Florida opposes CA's proposed
13 language.

14 **Q. DOESN'T CA'S LANGUAGE ACTUALLY SPEAK IN TERMS OF AT&T**
15 **FLORIDA PROVIDING "SIP VOICE-OVER-IP/VOICE USING-IP TRUNK**
16 **GROUPS," RATHER THAN IN TERMS OF AT&T FLORIDA PROVIDING**
17 **"IP INTERCONNECTION"?**

18 A. Yes. I believe, however, based in part on CA's Comments, that CA is basically
19 talking about IP Interconnection, so I will use that less complicated term.

20 **Q. IS IT AT&T FLORIDA'S POSITION THAT CA WOULD HAVE NO RIGHT**
21 **TO OBTAIN IP INTERCONNECTION FROM AT&T FLORIDA IF AT&T**

which they are occurring warrant an examination of whether, and how, communications law can be rationalized to address the 21st century communications landscape. For this reason, the committee initiated an examination of the regulation of the communications industry, and offers this opportunity for comment from all interested parties on the future of the law." See more at: <http://energycommerce.house.gov/commactupdate>.

1 **FLORIDA WERE TO PROVIDE IT TO ANOTHER CARRIER IN THE**
2 **FUTURE?**

3 A. No, that is not AT&T Florida's position. Indeed, the law might give CA that right –
4 depending on the circumstances. Under other circumstances, however, CA would not
5 have that right, as I explain below. Given this uncertainty, the ICA should not
6 anticipate one way or the other whether CA will in the future be entitled to lay claim
7 to rates, terms and conditions for IP interconnection that AT&T Florida may arrive at
8 with another carrier. If it turns out that the law gives CA that right, then CA will be
9 able to invoke its right; it does not need the ICA to say so.

10 In addition, as I also explain below, the particular approach that CA is taking
11 with its proposed language is directly contrary to federal law.

12 Q. **EXACTLY WHAT IS CA PROPOSING?**

13 A. CA proposes the following for section 4.3.11 of the Network Interconnection
14 Attachment to the ICA:

15 *SIP Voice-over-IP/Voice-using-IP Trunk Groups. In the event that*
16 *AT&T-21STATE offers, installs, or provides any interconnection*
17 *trunking using SIP Voice-over-IP or Voice-using-IP to any entity*
18 *including its affiliates, CA shall be entitled to order the same type of*
19 *interconnection trunking in the same areas and under the same terms*
20 *where it has been offered, installed or provided for others under this*
21 *agreement. The parties may mutually agree to complete a contract*
22 *amendment to codify additional terms and conditions, but such an*
23 *amendment shall not be required in order for CA to obtain the service*
24 *under nondiscriminatory terms and pricing. The parties recognize that*
25 *Voice-over-IP connects two network [sic] over the public internet, and*
26 *is not the same as Voice-using IP which connects two networks using*
27 *private non-internet peering. CA shall be entitled to select either of*
28 *these options, to the extent technically feasible or provided to another*
29 *party by AT&T-21STATE. In the case of Voice-using-IP, AT&T-*
30 *21STATE shall provide non-discriminatory access for CA to*
31 *interconnect its packet network to AT&T-21STATE's packet network*

1 *at any technically feasible point chosen by CA for the purpose of*
2 *interconnection only, utilizing technical means to ensure quality of*
3 *service and security.*

4 **Q. YOU SAID THAT UNDER CERTAIN CIRCUMSTANCES, THE LAW**
5 **MIGHT ENTITLE CA TO OBTAIN IP INTERCONNECTION FROM AT&T**
6 **FLORIDA ON THE SAME RATES, TERMS AND CONDITIONS AS AT&T**
7 **FLORIDA MAY ARRIVE AT IN THE FUTURE WITH ANOTHER**
8 **CARRIER. WHAT CIRCUMSTANCES DID YOU HAVE IN MIND?**

9 A. Assume that the FCC rules that section 251(c)(2) of the 1996 Act – the provision that
10 requires interconnection – requires interconnection in IP format, and that AT&T
11 Florida thereafter enters into an ICA with a CLEC that includes rates, terms and
12 conditions for IP interconnection. At the appropriate time, CA could adopt that
13 CLEC's ICA as its own. By doing so, CA would obtain the rates, terms and
14 conditions for IP interconnection that AT&T Florida agreed to with the other CLEC.

15 **Q. WHY WOULD CA BE PERMITTED TO ADOPT THE OTHER CLEC'S ICA?**

16 A. Section 252(i) of the 1996 Act provides, “A local exchange carrier shall make
17 available any interconnection, service, or network element provided under an
18 agreement approved under this section to which it is a party to any other requesting
19 telecommunications carrier upon the same terms and conditions as those provided in
20 the agreement.” The FCC has interpreted section 252(i) to mean that an incumbent
21 LEC, such as AT&T Florida, must permit a requesting carrier, like CA, to adopt as its
22 own any other carrier's interconnection agreement that has been approved by the state
23 commission.

24 **Q. IN THE HYPOTHETICAL SCENARIO YOU ARE DESCRIBING, WHERE**
25 **CA WANTS TO ADOPT AN ICA THAT AT&T FLORIDA ENTERS INTO AT**
26 **SOME POINT IN THE FUTURE WITH ANOTHER CLEC, WOULD IT BE**

1 **NECESSARY FOR THE ICA THAT THE PARTIES ARE ARBITRATING**
2 **NOW TO STATE THAT CA HAS THAT RIGHT?**

3 A. No. CA has whatever rights it has under section 252(i), and CA would not need its
4 existing ICA to recite that it has those rights in order for CA to exercise them.

5 Q. **APART FROM ADOPTING ANOTHER CLEC'S ICA, ARE THERE OTHER**
6 **CIRCUMSTANCES IN WHICH CA MIGHT BE ABLE TO OBTAIN RATES,**
7 **TERMS AND CONDITIONS FOR IP INTERCONNECTION FROM AT&T**
8 **FLORIDA?**

9 A. Yes. Again, assume that during the term of the ICA the parties are arbitrating, the
10 FCC rules that section 251(c)(2) requires ILECs to provide IP interconnection.
11 Regardless of what AT&T Florida did with any other CLEC, CA could assert,
12 pursuant to the agreed “Intervening Law” provisions in section 24 of the General
13 Terms and Conditions of the ICA the parties are arbitrating now, that the FCC’s
14 ruling is a change of law that entitles CA to amend the ICA to provide for IP
15 interconnection. In this scenario, CA would not necessarily obtain the same rates,
16 terms and conditions for IP Interconnection as another CLEC (though it might).
17 Assuming that the FCC ruling I am hypothesizing qualified as a change of law event
18 under section 24, however, CA would be entitled to rates, terms and conditions for IP
19 interconnection that conform with whatever rules the FCC might establish for IP
20 interconnection.

21 Q. **IN ORDER TO AVAIL ITSELF OF SUCH CHANGE OF LAW RIGHTS IN**
22 **THAT SCENARIO, WOULD CA NEED LANGUAGE ALONG THE LINES**
23 **OF WHAT IT IS PROPOSING FOR NETWORK INTERCONNECTION**
24 **SECTION 4.3.11?**

1 A. No. Again, CA will have whatever change of law rights it has under section 24, and
2 it has no need for an additional provision covering a change of law with respect to IP
3 interconnection in particular.

4 Q. **YOU SAID THERE ARE CIRCUMSTANCES IN WHICH AT&T FLORIDA
5 MIGHT PROVIDE IP INTERCONNECTION TO ANOTHER CARRIER BUT
6 CA WOULD NOT BE ENTITLED TO ANY SUCH RATES, TERMS OR
7 CONDITIONS PURSUANT TO ITS INTERCONNECTION AGREEMENT.
8 WHAT WOULD THOSE CIRCUMSTANCES BE?**

9 A. Assume that instead of ruling that section 251(c)(2) requires IP interconnection (as
10 we assumed before), the FCC rules that neither section 251(c)(2) nor any other
11 provision in the 1996 Act requires ILECs to provide IP interconnection. Assume
12 further that after the FCC makes that ruling, AT&T Florida enters into a commercial
13 agreement with a CLEC – and by that I mean a voluntary negotiated agreement not
14 compelled by or subject to sections 251 and 252 of the 1996 Act – that includes rates,
15 terms and conditions for IP interconnection. Certainly, nothing in the 1996 Act or in
16 any FCC regulation implementing the 1996 Act would require AT&T Florida to
17 provide the same rates, terms or conditions to CA, or to any other CLEC.¹⁰ Given
18 this possible scenario, it would obviously be a mistake for the Commission to adopt
19 the language CA is proposing for Issue 54, because that language would require
20 AT&T Florida – purportedly pursuant to the 1996 Act – to do something that the
21 1996 Act indisputably does not require.

¹⁰ If CA asked AT&T Florida for the same rates, terms and conditions and AT&T Florida refused, CA might try to assert some sort of discrimination claim – but any such claim would not arise under the 1996 Act, and so is not a proper consideration here.

1 **Q. PLEASE SUMMARIZE YOUR TESTIMONY ON ISSUE 54 UP TO THIS**
2 **POINT.**

3 A. CA's proposed language would require AT&T Florida to provide IP interconnection
4 to CA on the same rates, terms and conditions as those that AT&T Florida may in the
5 future arrive at with another CLEC. The Commission should reject CA's proposed
6 language. While there are circumstances under which the law would afford CA that
7 right, there is no need for CA's proposed language in order to preserve that right in
8 those circumstances. And CA's proposed language would yield an unlawful result
9 under foreseeable circumstances in which the law would not allow CA to obtain IP
10 Interconnection from AT&T Florida on the same rates, terms and conditions as
11 another CLEC.

12 **Q. IS THERE ANOTHER REASON THAT THE COMMISSION SHOULD**
13 **REJECT CA'S PROPOSED LANGUAGE?**

14 A. Yes. CA's language is directly contrary to federal law.

15 **Q. PLEASE EXPLAIN.**

16 A. As I said, the FCC has interpreted section 252(i) of the 1996 Act to allow a requesting
17 carrier, such as CA, to adopt as its own a state commission-approved interconnection
18 agreement between the ILEC – AT&T Florida in this case – and another CLEC. The
19 FCC has made absolutely clear, however, that a requesting carrier *cannot* adopt only
20 part of an existing ICA. Rather, under the FCC's so-called "All-or-Nothing Rule,"
21 the adopting carrier must take the existing ICA in its entirety.¹¹

¹¹ 47 C.F.R. § 51.809(a) provides in pertinent part, "An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement **in its entirety** to which the incumbent LEC is a party that is approved by a state commission

1 CA's proposed language is directly contrary to the All-or-Nothing Rule,
2 because it would entitle CA to adopt the rates, terms and conditions governing IP
3 interconnection in another agreement while spurning the remaining rates, terms and
4 conditions in that agreement.

5 **Q. WHAT IS THE RATIONALE FOR THE FCC'S ALL-OR-NOTHING RULE?**

6 A. As I understand it, the Rule reflects the fact that when carriers negotiate
7 interconnection agreements, they are free to agree to whatever they like, without
8 regard to the standards set forth in section 251 of the 1996 Act. Thus, for example, an
9 ILEC might agree to give the CLEC something concerning interconnection that goes
10 beyond what the law requires the ILEC to give, in exchange for the CLEC's
11 agreement to forego something concerning resale to which the law says the CLEC is
12 entitled. Because an interconnection agreement may reflect such gives and takes, the
13 FCC concluded that it would not be fair to allow a third party to come along and lay
14 claim to the gives without also accepting the takes.

15 **Q. IN ADDITION TO THE FACT THAT CA'S PROPOSAL WOULD
16 UNLAWFULLY PERMIT CA TO ADOPT SOME, BUT NOT ALL,
17 PROVISIONS OF ANOTHER AGREEMENT, IS THERE ANYTHING ELSE
18 WRONG WITH CA'S PROPOSAL?**

19 A. Yes. CA's proposed language states in part, "*The parties may mutually agree to
20 complete a contract amendment to codify additional terms and conditions, but such*

pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement."

(Emphasis added.)

1 *an amendment shall not be required in order for CA to obtain the service under*
2 *nondiscriminatory terms and pricing.”*

3 **Q. WHAT’S WRONG WITH THAT?**

4 A. It is contrary to the fundamental principle, which this Commission has recognized,
5 that the parties’ relations with respect to the matters covered by the ICA are governed
6 *solely* by the ICA. If something happens during the term of the ICA that warrants a
7 change in those relations, that change must be reflected in an amendment to the ICA
8 before it goes into effect.

9 **Q. WHEN DID THE COMMISSION RECOGNIZE THAT PRINCIPLE?**

10 A. Docket No. 000649-TP was an interconnection agreement arbitration between MCI
11 and BellSouth. At the time of the arbitration, the FCC’s Rules allowed carriers to
12 exercise their adoption rights under section 252(i) of the 1996 Act by opting into
13 individual provisions of an ICA – the so-called “Pick and Choose Rule,” which the
14 FCC abandoned in favor of the current “All or Nothing Rule” in 2004. One issue in
15 the arbitration was when a price, term or condition that MCI might adopt from
16 another ICA would become effective. MCI contended that the adoption should be
17 effective immediately upon MCI’s election to adopt the term or condition. *See Order*
18 No. PSC-01-0824-FOF-TP (March 30, 2001) at 190. BellSouth, on the other hand,
19 argued that the effective date of the adopted term or condition should be the date an
20 amendment is signed by MCI and BellSouth. *Id.* at 191. The Commission,
21 recognizing the fundamental principle that I noted above and that is directly contrary
22 to CA’s proposed contract language, agreed with BellSouth “that new terms and

1 conditions cannot become effective until incorporated in writing by both [MCI] and
2 BellSouth.” *Id.* at 192. Going a step further, the Commission held that the new terms
3 would become effective only after the Commission approved the amendment – not, as
4 BellSouth was willing to agree, upon execution of the amendment by the parties.

5 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 41?**

6 A. The Commission should reject CA’s proposed language for Network Interconnection
7 Attachment section 4.3.11. The language clearly violates the FCC’s All-or-Nothing
8 Rule, because it would allow CA to adopt the IP interconnection provisions in another
9 ICA (a hypothetical future ICA) without taking the entire ICA. And apart from that,
10 the Commission should not prejudge now whether the law will or will not permit CA
11 to obtain the IP interconnection provisions in some hypothetical agreement that
12 AT&T Florida may or may not arrive at in the future. If the law would allow CA to
13 do so under the particular circumstances at the time, then CA will be able to avail
14 itself of its legal rights, and there is no need for the ICA to preserve CA’s right to do
15 so. If, on the other hand, the law would not allow CA to do so under the particular
16 circumstances at the time, the Commission would err if it imposed ICA language that
17 permitted CA to do so.

18 **Q. HAS THE COMMISSION PREVIOUSLY ADDRESSED A SIMILAR ISSUE?**

19 A. Yes. In an arbitration between Global NAPs (“GNAPs”) and Verizon, Docket No.
20 011666-TP, GNAPs proposed to include in the ICA a provision – in addition to the
21 general change-in-law provision on which the parties agreed – specifically entitling
22 GNAPs to renegotiate the reciprocal compensation provisions in the ICA if the FCC’s

1 then recently-issued *ISP Remand Order* was overturned or modified. (The 2001 *ISP*
2 *Remand Order* addressed intercarrier compensation on ISP-bound traffic, which was
3 a very hot topic at the time.) The Commission rejected GNAPs' proposal, stating

4 We believe there are few industries more dynamic than
5 telecommunications. The possibility of a change in the law affecting
6 any provision of any interconnection agreement is ever present; thus, the
7 general change-in-law provision. It is not apparent to us that the general
8 change-in-law provision is inadequate in the event of a change in the
9 law affecting the ISP issue. Additionally, it would be inconsistent to
10 include a specific provision for ISP issues and not for other issues which
11 may also see change in the foreseeable future.

12 Order No. PSC-03-0805-FOF-TP (July 9, 2003) at 22. Here, too, CA's proposed
13 contract language is unnecessary if AT&T Florida in the future enters into
14 arrangements with another carrier for IP interconnection to which CA is also entitled,
15 because CA will be able to avail itself of its rights – whatever they may be – at the
16 time. *See also*, Order No. PSC-10-0711-FOF-TP (Dec. 3, 2010), issued in an
17 arbitration between Verizon and Bright House Networks, Docket No. 090501-TP, at 9
18 (“Bright House is asking this Commission to address future interconnections without
19 reference to any specific network configuration. Upon review, we are persuaded by
20 Verizon that we should not make decisions at this time regarding such future
21 interconnections Brighthouse has not presented sufficient justification to
22 warrant a ruling on issues that *may* exist at some time in the future.”) (emphasis in
23 original).

24 Q. **DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

25 A. Yes.