

**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. )

**Rebuttal Testimony of Patricia H. Pellerin**

**On Behalf of AT&T Florida**

**March 23, 2015**

**ISSUES**

11, 13a, 13b, 13c, 13d,  
14a, 14b, 15-21, 22a,  
22b, 23-30, 32, 35-37,  
42- 43,45, 60- 61, 66

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**I. INTRODUCTION**

**Q. ARE YOU THE SAME PATRICIA H. PELLERIN WHO SUBMITTED TESTIMONY ON BEHALF OF AT&T FLORIDA ON FEBTRUARY 16?**

A. Yes. In my Rebuttal Testimony, I reference my Direct Testimony as “Pellerin Direct.”

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

A. The purpose of my Rebuttal Testimony is to respond to the Direct Testimony of CA’s witness, Mike Ray (“Ray Direct”), for the issues I addressed in my Direct Testimony.

**Q. DO YOU HAVE ANY EXHIBITS SUPPORTING YOUR REBUTTAL TESTIMONY?**

A. Yes. I have the following exhibits:

- Exhibit PHP-9 CA Response to AT&T Florida Request for Admission No. 58
- Exhibit PHP-10 Email Friedman to Twomey, January 14, 2015
- Exhibit PHP-11 Email Twomey to Friedman, January 22, 2015
- Exhibit PHP-12 Email Friedman to Twomey, January 23, 2015
- Exhibit PHP-13 Email Friedman to Twomey, January 27, 2015
- Exhibit PHP-14 Email Twomey to Friedman, January 27, 2015
- Exhibit PHP-15 Email Friedman to Twomey, February 6, 2015
- Exhibit PHP-16 Email Friedman to Twomey, February 11, 2015
- Exhibit PHP-17 CA Response to AT&T Florida Interrogatory No. 64
- Exhibit PHP-18 Email Friedman to Twomey, January 29, 2015
- Exhibit PHP-19 CA Response to AT&T Florida Interrogatory No. 110

1 **II. DISCUSSION OF ISSUES**

2 **ISSUE 11: SHOULD THE PERIOD OF TIME IN WHICH THE BILLED PARTY**  
3 **MUST REMIT PAYMENT BE THIRTY (30) DAYS FROM THE BILL**  
4 **DATE OR TWENTY (20) DAYS FROM RECEIPT OF THE BILL?**

5 **Affected Contract Provision: GT&C § 2.45**

6 **Q. MR. RAY STATES THAT MANY PREVIOUS ICAS CONTAIN CA'S**  
7 **LANGUAGE AND THAT IT IS "COMMON ENOUGH TO BE CONSIDERED**  
8 **INDUSTRY STANDARD" (RAY DIRECT AT P. 13, LINES 8-9). HOW DO YOU**  
9 **RESPOND?**

10 A. I don't know what ICAs Mr. Ray is referencing, or even if they are AT&T Florida ICAs,  
11 because he does not provide any examples. I examined a representative sample of AT&T  
12 Florida ICAs and did not find any with the terms CA is proposing.<sup>1</sup> The effective dates  
13 of these ICAs range from January 1, 2001 to May 25, 2011. There is nothing "standard"  
14 about CA's proposal.

15 **Q. MR. RAY STATES THAT IF AT&T FLORIDA DOES NOT SEND A TIMELY**  
16 **BILL, CA SHOULD HAVE MORE TIME TO PAY OR DISPUTE THE BILL. HE**  
17 **FURTHER STATES THAT IF CA "ABUSES THIS PROVISION," AT&T**  
18 **FLORIDA CAN SEEK DISPUTE RESOLUTION REMEDIES (RAY DIRECT AT**  
19 **P. 13, LINES 3-6). PLEASE COMMENT.**

20 A. I do not understand what Mr. Ray means by "abuses this provision." Does he mean that  
21 if CA claimed each and every month that AT&T Florida's bill arrived more than ten days  
22 after the bill date (such that the due date would be later than 30 days after the bill date),  
23 AT&T Florida could invoke dispute resolution and eventually lodge a complaint with the  
24 Commission? Or does he mean eight months out of 12? Or four months? CA does not

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<sup>1</sup> I reviewed the following ICAs: Access Communications (2006), Alternative Phone (2011), Broadwing (2005), Cox (2010), Florida Multi-Media (2005), Interactive Services Network (2007), New Talk (2009), Sprint Communications (2001), Terra Nova Telecom (2005), and Time Warner Telecom (2007). One of the ICAs I reviewed (Alternative Phone) provides for the 30-day payment period AT&T Florida proposes here, and the others (all earlier vintage) require payment by the next bill date. Since bills are rendered monthly, the terms are essentially the same.



1 propose any language that addresses or explains what would constitute “abuse.” In fact,  
2 the plain meaning of CA’s language does not provide for AT&T Florida to make any  
3 claims of “abuse.”<sup>2</sup>

4 **Q. MR. RAY ALSO SUGGESTS THAT AT&T FLORIDA COULD SEND ITS BILLS**  
5 **TO CA “WITH DELIVERY CONFIRMATION TO PROVE DATE OF RECEIPT”**  
6 **(RAY DIRECT AT P. 13, LINES 6-7). IS THAT REASONABLE?**

7 A. No – unless CA is willing to cover the additional cost CA is suggesting AT&T Florida  
8 incur in order to accommodate CA’s proposal, which it is not. AT&T Florida should not  
9 have to bear the additional cost to send paper bills to CA via Certified U.S. Mail or via  
10 other private carrier in order to document CA’s receipt for the sole purpose of identifying  
11 the Bill Due Date.

12 **Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

13 A. The Commission should adopt AT&T Florida’s language requiring bills to be paid within  
14 30 days of the bill date and reject CA’s proposed language that would define the Bill Due  
15 Date based on the later of that date or 20 days from receipt.

16 **ISSUE 13a(i): SHOULD THE DEFINITION OF “LATE PAYMENT CHARGE”**  
17 **LIMIT THE APPLICABILITY OF SUCH CHARGES TO**  
18 **UNDISPUTED CHARGES NOT PAID ON TIME?**

19 **ISSUE 13a(ii): SHOULD LATE PAYMENT CHARGES APPLY IF**  
20 **COMMUNICATIONS AUTHORITY DOES NOT PROVIDE THE**  
21 **NECESSARY REMITTANCE INFORMATION?**

22 **Affected Contract Provision: GT&C § 2.106**

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<sup>2</sup> “Bill Due Date” means thirty (30) calendar days from the bill date *or 20 days following receipt of a bill by the billed party, whichever is later.*

1 **ISSUE 13b: SHOULD THE DEFINITION OF “PAST DUE” BE LIMITED TO**  
2 **UNDISPUTED CHARGES THAT ARE NOT PAID ON TIME?**

3 **Affected Contract Provision: GT&C § 2.137**

4 **ISSUE 13c: SHOULD THE DEFINITION OF “UNPAID CHARGES” BE LIMITED TO**  
5 **UNDISPUTED CHARGES THAT ARE NOT PAID ON TIME?**

6 **Affected Contract Provision: GT&C § 2.164**

7 **ISSUE 13d: SHOULD LATE PAYMENT CHARGES APPLY ONLY TO UNDISPUTED**  
8 **CHARGES?**

9 **Affected Contract Provision: GT&C § 11.3.1**

10 **Q. IN YOUR DIRECT TESTIMONY, YOU ADDRESSED EACH OF THESE ISSUES**  
11 **SEPARATELY. WHY HAVE YOU GROUPED THEM TOGETHER IN YOUR**  
12 **REBUTTAL TESTIMONY?**

13 A. I did that because Mr. Ray addresses all five issues together in his testimony (at pp. 15-  
14 16), and because I have already addressed virtually everything he says about these issues.  
15 This is because for the most part, Mr. Ray’s testimony tracks CA’s Comments, which I  
16 addressed in my Direct Testimony (at pp. 7-16).

17 **Q. DOES MR. RAY SAY ANYTHING IN HIS TESTIMONY ON THESE ISSUES**  
18 **THAT YOU DID NOT ADDRESS IN YOUR DIRECT TESTIMONY?**

19 A. Yes, and it strongly supports AT&T Florida’s position that late payment charges should  
20 apply to disputed amounts. Mr. Ray concedes that late payment charges apply to any  
21 unpaid amounts – including disputed amounts – provided that late payment charges are  
22 credited if a dispute is resolved in CA’s favor. As he puts it, “CA does not object, as a  
23 practical matter, to AT&T’s proposal that Late Payment Charges accrue on all unpaid  
24 balances and then are refunded for disputed amounts resolved in CA’s favor.”<sup>3</sup>

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<sup>3</sup> Ray Direct at p. 16, lines 4-10.

1 **Q. HOW SHOULD THE COMMISSION RESOLVE THESE ISSUES?**

2 A. The Commission should resolve all parts of Issue 13 in favor of AT&T Florida by ruling  
3 that late payment and interest charges apply to all unpaid balances, including disputed  
4 amounts.

5 **ISSUE 14a: SHOULD THE GT&CS STATE THAT THE PARTIES SHALL PROVIDE**  
6 **EACH OTHER LOCAL INTERCONNECTION SERVICES OR**  
7 **COMPONENTS AT NO CHARGE?**

8 **Affected Contract Provision: GT&C § 5.1**

9 **Q. YOU EXPLAINED IN YOUR DIRECT TESTIMONY THAT CA'S LANGUAGE**  
10 **IS UNNECESSARY (PELLERIN DIRECT AT PP. 16-17). DOES MR. RAY'S**  
11 **TESTIMONY FOR THIS ISSUE DEMONSTRATE THAT CA'S LANGUAGE IS**  
12 **NECESSARY?**

13 A. No. The issue of cost allocation on each party's side of the POI is already appropriately  
14 addressed in the Network Interconnection attachment, and Mr. Ray does not suggest  
15 otherwise.

16 **Q. YOU ALSO EXPLAINED IN YOUR DIRECT TESTIMONY THAT CA'S**  
17 **LANGUAGE IS UNCLEAR (PELLERIN DIRECT AT PP. 16-17). DOES MR.**  
18 **RAY'S TESTIMONY PROVIDE THE MISSING CLARITY?**

19 A. No. Mr. Ray states that CA's position would not require AT&T Florida to provide  
20 Entrance Facilities at no charge (Ray Direct at p. 16, lines 19-20). But that is not the  
21 point, since the parties agree that each party is responsible for the facilities on its side of  
22 the POI, and Entrance Facilities are on CA's side of the POI. Mr. Ray's testimony  
23 actually demonstrates the lack of clarity of CA's language, because he refers to the  
24 scenario where CA's collocation is the POI. As I explained in my Direct Testimony for  
25 Issue 35 (at p. 68), and as Mr. Neinast explained in his testimony for Issue 38, CA cannot  
26 designate its collocation as the POI because the collocation is not on AT&T Florida's

1 network. Furthermore, nothing in Mr. Ray's testimony explains what CA means by  
2 "local interconnection services or components located at the POI" other than a vague  
3 reference to AT&T Florida's charges for intra-building circuits provided to another  
4 CLEC pursuant to a different ICA.

5 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 14a?**

6 A. The Commission should reject CA's additional language because it is both unnecessary  
7 and confusing.

8 **ISSUE 14b(i): SHOULD AN ASR SUPPLEMENT BE REQUIRED TO EXTEND THE**  
9 **DUE DATE WHEN THE REVIEW AND DISCUSSION OF A TRUNK**  
10 **SERVICING ORDER EXTENDS BEYOND 2 BUSINESS DAYS?**

11 **ISSUE 14b(ii): SHOULD AT&T FLORIDA BE OBLIGATED TO PROCESS**  
12 **COMMUNICATIONS AUTHORITY'S ASRS AT NO CHARGE?**

13 **Affected Contract Provision: Net. Int. § 4.6.4**

14 **Q. DOES MR. RAY'S TESTIMONY FOR ISSUE 14b(i) RECOGNIZE THE**  
15 **CONTEXT OF NET. INT. SECTION 4.6.4 (RAY DIRECT AT PP. 17-18)?**

16 A. No. Mr. Ray's testimony misses the mark completely. His rant about AT&T Florida's  
17 alleged failures to complete trunk orders on time has nothing whatsoever to do with the  
18 limited context of Net. Int. section 4.6.4, which deals only with trunk servicing orders  
19 that are placed in held status for longer than two days to accommodate the parties'  
20 discussion about whether an order should be fulfilled as placed, or if it should even be  
21 fulfilled at all. See my Direct Testimony at pages 18-19.

22 **Q. MR. RAY REJECTS AT&T FLORIDA'S CHARACTERIZATION OF CA AS**  
23 **THE "COST CAUSER" OF TRUNK ASRS (RAY DIRECT AT P. 17, LINE 22 TO**  
24 **P. 18, LINE 4). HOW DO YOU RESPOND?**

1 A. Mr. Ray is mistaken. CA is the cost causer because it is CA that seeks to directly  
2 interconnect with AT&T Florida, and it is CA that ultimately controls the trunk orders it  
3 submits to AT&T Florida. This is particularly true in the case of trunk orders associated  
4 with CA's rearrangements that would occur, for example, when CA shifts traffic from  
5 one trunk group to another. Such rearrangements would require one or more trunk  
6 groups to be augmented, while others are reduced. But even if CA were not the cost  
7 causer, CA has agreed to pay for service orders pursuant to Pricing Schedule section  
8 1.7.4, which does not exempt service orders for interconnection trunks.

9 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 14b?**

10 A. The Commission should (i) adopt AT&T Florida's language that will require a  
11 supplemental ASR to change the due date on a trunk servicing order if the order is held  
12 for discussion for more than two days; and (ii) reject CA's language that would obligate  
13 AT&T Florida to process CA's trunk orders for free, in direct conflict with agreed  
14 language in the Pricing Schedule.

15 **ISSUE 15(ii): MAY COMMUNICATIONS AUTHORITY EXCLUDE EXPLOSION,**  
16 **COLLAPSE AND UNDERGROUND DAMAGE COVERAGE FROM ITS**  
17 **COMMERCIAL GENERAL LIABILITY POLICY IF IT WILL NOT**  
18 **ENGAGE IN SUCH WORK?**

19 **Affected Contract Provision: GT&C § 6.2.2.14**

20 **Q. MR. RAY STATES THAT CA MAY NOT BE ABLE TO OBTAIN INSURANCE**  
21 **TO COVER HAZARDOUS ACTIVITIES DUE TO LACK OF EXPERTISE (RAY**  
22 **DIRECT AT P. 18, LINES 19-20). HOW DO YOU RESPOND?**

23 A. Hazards are an inherent part of facilities-based telecommunications service. To the  
24 extent CA will operate as a facilities-based CLEC, its personnel need the proper  
25 expertise. When CA personnel enter an underground structure via a manhole, those

1 personnel need to be trained to avoid and, if necessary, deal with possible hazards,  
2 including explosion and collapse. Provided CA's personnel possess the necessary  
3 expertise, CA should not have a problem obtaining the required insurance coverage to  
4 protect against the risk associated with such hazards.

5 **Q. IS CA OBLIGATED TO OBTAIN INSURANCE AS A COLLOCATOR WHEN IT**  
6 **IS ONLY OPERATING AS A RESELLER (i.e., NOT COLLOCATING)?**

7 A. No. GT&C section 6.2.2 provides different insurance coverage requirements when CA is  
8 collocating and when it is not collocating. Since the hazards identified in GT&C section  
9 6.2.2.14 only apply in the collocation scenario, CA would not need to obtain such  
10 coverage as a non-collocator.

11 **Q. MR. RAY STATES THAT CA SHOULD NOT BE OBLIGATED TO INCLUDE**  
12 **HAZARDS COVERAGE IN ITS INSURANCE POLICY WHEN IT IS NOT**  
13 **ENGAGED IN SUCH WORK (RAY DIRECT AT P. 18, LINE 12). WILL CA**  
14 **ENGAGE IN SUCH WORK AS A COLLOCATOR?**

15 A. Yes. Collocation section 14.1.2 obligates CA to bring its fiber facilities to the entrance  
16 manhole so AT&T Florida can pull them through to the cable vault. To bring its facilities  
17 to the manhole, CA must enter the underground structure. And entering the underground  
18 structure is "engaging in such work."

19 **Q. DOES THE COLLOCATION ATTACHMENT ALSO ADDRESS INSURANCE**  
20 **REQUIREMENTS?**

1 A. Yes, in section 4.6. Collocation section 4.6.1 provides that the coverage limits set forth  
2 in the GT&Cs apply when CA is a collocator. And Section 4.6.2 states that CA must  
3 provide AT&T Florida proof of insurance prior to commencing work.<sup>4</sup>

4 **Q. SO WHAT IS THE REAL ISSUE HERE?**

5 A. The real issue is CA's attempt via its additional language in GT&C section 6.2.2.14 ("if  
6 CLEC will engage in such work") to exclude "explosion, Collapse, and Underground  
7 Damage Liability" coverage from its insurance policy when it is collocated. CA does not  
8 acknowledge that these risks are inherent in facilities-based telecommunications, and CA  
9 does not acknowledge that it will "engage in such work" when it collocates. If CA  
10 excludes these hazards from its insurance policy, AT&T Florida will not be adequately  
11 protected from loss.

12 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 15(ii)?**

13 A. The Commission should reject CA's additional language in GT&C section 6.2.2.14  
14 because it could expose AT&T Florida to risk that should be CA's to bear.

15 **ISSUE 16: WHICH PARTY'S INSURANCE REQUIREMENTS ARE APPROPRIATE**  
16 **FOR THE ICA WHEN COMMUNICATIONS AUTHORITY IS**  
17 **COLLOCATING?**

18 **Affected Contract Provisions: GT&C §§ 6.2.2.6 through 6.2.2.10**

19 **Q. MR. RAY STATES THAT CA'S PROPOSED INSURANCE REQUIREMENTS**  
20 **ARE APPROPRIATE BECAUSE THEY ARE BASED ON THE VERIZON –**  
21 **TERRA NOVA ICA AND THAT AT&T FLORIDA HAS NOT SHOWN THAT**  
22 **CA'S PROPOSED INSURANCE IS INADEQUATE (RAY DIRECT AT P. 19,**  
23 **LINES 11-14). HOW DO YOU RESPOND?**

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<sup>4</sup> The parties' disagreement regarding the terms that should apply if CA fails to deliver the insurance certificate, which is reflected in Issue 5, is addressed by Ms. Kemp.

1 A. AT&T Florida is not, nor should it be, bound to accept the insurance levels adopted by  
2 Verizon and Terra Nova.<sup>5</sup> Further, I have explained in my Direct Testimony (at pp. 21-  
3 25) why AT&T Florida’s proposed insurance levels are appropriate for the ICA and why  
4 CA’s proposed levels are inadequate for the risk AT&T Florida faces when CA is  
5 collocated on AT&T Florida’s premises. While not binding here, it is illuminating that  
6 AT&T Florida’s ICA with Terra Nova requires \$10 million in Commercial General  
7 Liability coverage – the same amount AT&T Florida seeks here.

8 **Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

9 A. The Commission should adopt AT&T Florida’s Commercial General Liability coverage  
10 limits.

11 **ISSUE 17(ii): SHOULD AT&T FLORIDA BE OBLIGATED TO RECOGNIZE AN**  
12 **ASSIGNMENT OR TRANSFER OF THE ICA THAT THE ICA DOES**  
13 **NOT PERMIT?**

14 **ISSUE 17(iii): SHOULD THE ICA DISALLOW ASSIGNMENT OR TRANSFER OF**  
15 **THE ICA TO AN AFFILIATE THAT HAS ITS OWN ICA IN FLORIDA?**

16 **Affected Contract Provision: GT&C § 7.1.1**

17 **Q. MR. RAY STATES THAT AT&T FLORIDA’S LANGUAGE WOULD GIVE IT**  
18 **AN “UNREASONABLE ABILITY TO PREVENT THE SALE OF CA OR ITS**  
19 **ASSETS” (RAY DIRECT AT P. 20, LINES 7-9). HOW DO YOU RESPOND?**

20 A. Mr. Ray is wrong. During negotiations, AT&T Florida agreed to CA’s language that  
21 AT&T Florida would not unreasonably withhold consent of a requested assignment or  
22 transfer of CA’s ICA.

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<sup>5</sup> Mr. Ray’s testimony that CA’s insurance limits are “based on” the Terra Nova – Verizon ICA, which was an adoption of the Clear Rate – Verizon ICA, is misleading. I reviewed the insurance requirements set forth in the Clear Rate ICA. Although that ICA provides for \$2 million in coverage per occurrence, which is consistent with CA’s proposed coverage here, it also requires \$10 million in umbrella insurance coverage, which CA does not propose.



1 **Q. ARE AT&T FLORIDA’S ASSIGNMENT TERMS UNREASONABLE?**

2 A. Not at all, nor does Mr. Ray provide any support for his claim that they are. CA should  
3 not be permitted to assign its ICA to an affiliate that already operates pursuant to its own  
4 ICA, as I explained in my Direct Testimony (at p. 27).

5 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUES 17(ii) AND 17(iii)?**

6 A. The Commission should adopt AT&T Florida’s language that i) states that AT&T Florida  
7 is not obligated to recognize an assignment or transfer of the ICA that is not permitted;  
8 and ii) does not permit assignment to a CA affiliate that already has an ICA with AT&T  
9 Florida.

10 **ISSUE 18: SHOULD THE ICA EXPIRE ON A DATE CERTAIN THAT IS TWO**  
11 **YEARS PLUS 90 DAYS FROM THE DATE THE ICA IS SENT TO**  
12 **COMMUNICATIONS AUTHORITY FOR EXECUTION, OR SHOULD**  
13 **THE TERM OF THE ICA BE FIVE YEARS FROM THE EFFECTIVE**  
14 **DATE?**

15 **Affected Contract Provision: GT&C § 8.2.1**

16 **Q. WHAT IS THE CURRENT STATUS OF THIS ISSUE?**

17 A. In hopes of resolving this issue, AT&T Florida recently modified its position to offer CA  
18 a three-year term. The following language for GT&C section 8.2.1 represents the parties’  
19 current dispute regarding the term of the ICA:

20 Unless terminated for breach (including nonpayment), the term of this  
21 Agreement shall commence upon the Effective Date of this Agreement  
22 and shall expire on [**Three years +90 days from the date sent to CLEC**  
23 **for execution**] *five years from the Effective Date* (the “Initial Term”).<sup>6</sup>

24 **Q. ARE YOU SAYING THAT CA DID NOT ACCEPT AT&T FLORIDA’S OFFER?**

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<sup>6</sup> AT&T Florida informed CA’s counsel via email March 12, 2015 that it would be reflecting its revised language in its rebuttal testimony.

1 A. Yes, which is puzzling. Throughout the parties' negotiations before CA filed for  
2 arbitration, CA was seeking a three-year term. I find it odd that CA refuses to accept the  
3 three-year term it was negotiating for all along. In fact, it was not until CA filed for  
4 arbitration that CA demanded a five-year term, which came as a complete surprise to  
5 AT&T Florida.

6 **Q. DID CA OFFER ANY EXPLANATION FOR REFUSING AT&T FLORIDA'S**  
7 **ACCEPTANCE OF THE THREE-YEAR TERM CA ADVOCATED IN THE**  
8 **NEGOTIATIONS?**

9 A. No.

10 **Q. DOES MR. RAY PROVIDE ANY TESTIMONY REGARDING THIS ISSUE**  
11 **THAT DIFFERS FROM CA'S COMMENTS?**

12 A. No. Mr. Ray merely regurgitates what CA stated in its Comments. I addressed most of  
13 that in my Direct Testimony (at pp. 28-30).

14 **Q. WHAT DOES MR. RAY REITERATE FROM CA'S COMMENTS THAT YOU**  
15 **DID NOT ADDRESS IN YOUR DIRECT TESTIMONY?**

16 A. Mr. Ray makes allegations regarding the nature of the parties' negotiations for this issue.  
17 Specifically, Mr. Ray claims that AT&T Florida offered to make some sort of side deal  
18 ("under separate cover") regarding extending CA's ICA in evergreen status (Ray Direct  
19 at p. 21, lines 13-17). Mr. Ray further states that CA rejected that deal because AT&T  
20 Florida was behaving in an anti-competitive manner and not acting in good faith. This is  
21 at best a misunderstanding and at worst a complete fabrication. As a practical matter,  
22 AT&T Florida's ICAs frequently operate in evergreen status past their expiration dates.  
23 But AT&T Florida did not, nor would it, offer to make an extra-ICA arrangement with  
24 CA (or any CLEC) regarding extending the term of the ICA.

1 **Q. HOW DO YOU RESPOND TO MR. RAY’S ARGUMENT THAT THE**  
2 **COMMISSION SHOULD AWARD CA A FIVE-YEAR TERM IN ORDER TO**  
3 **ENSURE THAT CA’S ICA WILL BE AVAILABLE FOR FIVE YEARS FOR**  
4 **OTHER CLECS TO ADOPT (RAY DIRECT AT P. 21, LINES 1-4 AND 8-11)?**

5 A. The argument does not hold water, because it is based on the mistaken assumption that an  
6 ICA with a five-year term will necessarily be available for adoption for five years.  
7 Under the FCC’s Rules, an ICA must only be made available for adoption for a  
8 reasonable period of time, not indefinitely. 47 C.F.R. ¶ 51.809(c) (“Individual  
9 agreements shall remain available for use by telecommunications carriers pursuant to this  
10 section for a reasonable period of time after the approved agreement is available for  
11 public inspection . . .”). Neither the FCC nor this Commission has defined what  
12 constitutes a “reasonable period of time” for purposes of Rule 809(c). At least arguably,  
13 three years is a reasonable period of time, so that AT&T Florida could appropriately  
14 reject a CLEC’s request to adopt CA’s ICA more than three years after it is approved,  
15 even if the ICA had a five-year term. Alternatively, the same sort of technological  
16 changes that militate against a five-year term for CA (see Pellerin Direct at 29, lines 11-  
17 16) would also justify rejection of an adoption request on the ground that in light of the  
18 occurrence of such changes, a “reasonable period of time” has passed, so that an ICA that  
19 does not reflect those changes need no longer be made available for adoption.

20 The Commission need not, and should not, decide now whether it would sustain a  
21 rejection of an adoption request on the ground that the requested ICA was already  
22 available for three years or does not reflect intervening technological changes. The  
23 important point for present purposes is simply that the Commission should not blithely

1 assume, as CA does, that an ICA with a five-year term will necessarily be available for  
2 adoption for five years.

3 **Q. HOW SHOULD THE COMMISSION RULE ON ISSUE 18?**

4 A. The Commission should adopt AT&T Florida's language reflecting that the ICA expires  
5 on a date certain that is three years and 90 days from the date AT&T Florida sends the  
6 ICA to CA for execution. CA's proposed five-year term from the effective date of the  
7 ICA is too long in today's rapidly-changing industry.

8 **ISSUE 19: SHOULD TERMINATION DUE TO FAILURE TO CORRECT A**  
9 **MATERIAL BREACH BE PROHIBITED IF THE DISPUTE**  
10 **RESOLUTION PROCESS HAS BEEN INVOKED BUT NOT**  
11 **CONCLUDED?**

12 **Affected Contract Provision: GT&C § 8.3.1**

13 **Q. DOES MR. RAY PROVIDE ANY TESTIMONY REGARDING THIS ISSUE**  
14 **THAT YOU DID NOT ADDRESS IN YOUR DIRECT TESTIMONY?**

15 A. No. Mr. Ray's testimony simply quotes verbatim what CA stated in its Comments,  
16 which I have already addressed. See my Direct Testimony at pages 31-34. The  
17 Commission should reject CA's additional language in GT&C section 8.3.1.

18 **ISSUE 20: SHOULD AT&T FLORIDA BE PERMITTED TO REJECT**  
19 **COMMUNICATIONS AUTHORITY'S REQUEST TO NEGOTIATE A**  
20 **NEW ICA WHEN COMMUNICATIONS AUTHORITY HAS AN**  
21 **OUTSTANDING BALANCE UNDER THIS ICA?**

22 **Affected Contract Provision: GT&C § 8.4.6**

23 **Q. DOES MR. RAY PROVIDE ANY TESTIMONY REGARDING THIS ISSUE**  
24 **THAT YOU DID NOT ADDRESS IN YOUR DIRECT TESTIMONY?**

25 A. No. Mr. Ray's testimony simply quotes verbatim what CA stated in its Comments,  
26 which I have already addressed. See my Direct Testimony at pages 34-35. The

1 Commission should reject CA’s language that would permit it to negotiate a successor  
2 ICA when there is an outstanding billing dispute.

3 **Q. DO YOU HAVE ANYTHING TO ADD TO YOUR DIRECT TESTIMONY BASED**  
4 **ON CA’S RECENT RESPONSE TO A DISCOVERY REQUEST?**

5 A. Yes. In my Direct Testimony (at p. 35, lines 1-7), I pointed out that CA’s principal  
6 argument on this issue is absurd because it ignores the fact that CA has a right to invoke  
7 dispute resolution to clear any pending billing disagreements. CA has now admitted that  
8 that is correct.<sup>7</sup>

9 **ISSUE 21: SHOULD COMMUNICATIONS AUTHORITY BE RESPONSIBLE FOR**  
10 **LATE PAYMENT CHARGES WHEN COMMUNICATIONS**  
11 **AUTHORITY’S PAYMENT IS DELAYED AS A RESULT OF ITS**  
12 **FAILURE TO USE ELECTRONIC FUNDS CREDIT TRANSFERS**  
13 **THROUGH THE ACH NETWORK?**

14 **Affected Contract Provision: GT&C § 11.8**

15 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

16 A. The parties have resolved it.

17 **ISSUE 22a: SHOULD THE DISPUTING PARTY USE THE BILLING PARTY’S**  
18 **PREFERRED FORM OR METHOD TO COMMUNICATE BILLING**  
19 **DISPUTES?**

20 **Affected Contract Provision: GT&C § 11.9**

21 **ISSUE 22b: SHOULD COMMUNICATIONS AUTHORITY USE AT&T FLORIDA’S**  
22 **FORM TO NOTIFY AT&T FLORIDA THAT IT IS DISPUTING A BILL?**

23 **Affected Contract Provision: GT&C § 13.4**

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<sup>7</sup> AT&T Florida’s Request for Admission No. 58 asked CA to admit that in the scenario that formed the basis for CA’s principal argument, *i.e.*, the scenario where AT&T Florida fails to invoke the dispute resolution provisions, “CA could invoke those dispute resolution provisions itself.” CA’s Response: “Admitted.” See Exhibit PHP-9.

1 **Q. DOES MR. RAY PROVIDE ANY TESTIMONY REGARDING BILLING**  
2 **DISPUTE FORMS THAT YOU DID NOT ADDRESS IN YOUR DIRECT**  
3 **TESTIMONY?**

4 A. No. Mr. Ray reiterated in his testimony what CA stated in its Comments, which I have  
5 already addressed. See my Direct Testimony at pages 37-41. The Commission should  
6 resolve this issue in favor of AT&T Florida.

7 **ISSUE 23: SHOULD A PARTY THAT DISPUTES A BILL BE REQUIRED TO PAY**  
8 **THE DISPUTED AMOUNT INTO AN INTEREST-BEARING ESCROW**  
9 **ACCOUNT PENDING RESOLUTION OF THE DISPUTE?**

10 **Affected Contract Provisions:**

- 11 (a) GT&C §§ 11.9 through 11.12, 11.13.2 through 11.13.4  
12 (b) GT&C §§ 12.4.3, 12.4.4  
13 (c) GT&C § 12.6.2

14 **Q. MR. RAY IMPLIES THAT AT&T FLORIDA WOULD PURPOSELY BILL CA**  
15 **“IN ERROR” TO DRIVE CA INTO DEFAULT IF IT COULD NOT RAISE THE**  
16 **FUNDS TO PLACE INTO ESCROW (RAY DIRECT AT P. 24, LINE 22 TO P. 25,**  
17 **LINE 1). HOW DO YOU RESPOND?**

18 A. That is absurd and offensive. AT&T Florida does not and would not fabricate inflated  
19 bills to drive CLECs out of business. Furthermore, Mr. Ray overlooks what AT&T  
20 Florida’s proposed escrow language actually requires. As I explained in my Direct  
21 Testimony (at pp. 43-44), AT&T Florida’s language carves out exceptions to the escrow  
22 requirement.<sup>8</sup> This includes situations where i) the amount disputed is less than \$15,000  
23 (section 11.9.1.1); ii) CA has maintained 12 months of timely payment and unpaid  
24 amount is 10% or less of the current bill (section 11.9.1.2); and iii) when an obvious  
25 billing error has occurred (section 11.9.1.3).

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<sup>8</sup> Reciprocal compensation is always excluded from the escrow requirement (GT&C section 11.9).

1 **Q. IS MR. RAY CORRECT THAT AT&T FLORIDA’S LANGUAGE DOES NOT**  
2 **COMPENSATE CA FOR THE COST OF ESTABLISHING AN ESCROW**  
3 **ACCOUNT (RAY DIRECT AT P. 24, LINES 1-3)?**

4 A. Yes. However, Mr. Ray offers no testimony regarding how much it would cost CA to  
5 establish an escrow account or why it would be burdensome. AT&T Florida’s language  
6 provides a reasonable solution. *First*, as I explained, CA would not be required to  
7 establish an escrow account if any of the exceptions applied. Since CA is a small new  
8 entrant,<sup>9</sup> those exceptions should care for most disputes. Nor would CA have to escrow  
9 any amounts associated with reciprocal compensation (per GT&C section 11.9). *Second*,  
10 CA always has the option of paying AT&T Florida while disputing the bill. In doing so,  
11 CA will avoid not only any charges assessed by the escrow agent, but also the accrual of  
12 late payment charges while the dispute is pending. If the dispute is resolved in AT&T  
13 Florida’s favor, the dispute can simply be closed and no late payment charges will be  
14 assessed. If the dispute is resolved in CA’s favor, AT&T Florida will credit CA’s  
15 account accordingly. AT&T Florida is a reputable company with a solid balance sheet,  
16 so there is no reason for CA to be concerned that it will not receive the appropriate  
17 credit(s). In contrast, AT&T Florida has no such confidence in CA’s ability to pay.  
18 AT&T Florida should not be required to incur the risk of not being paid if CA does not  
19 either pay or escrow disputed amounts not subject to the stated exclusions.

20 **Q. MR. RAY ALSO ASSERTS THAT TWO-MONTHS’ DEPOSIT “WOULD**  
21 **PROVIDE ADEQUATE ASSURANCE OF PAYMENT” (RAY DIRECT AT P. 25,**  
22 **LINES 22-24). IS HE CORRECT?**

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<sup>9</sup> Ray Direct at p. 20, line 15.

1 A. No. As I explained in my Direct Testimony (at p. 42), deposit and escrow terms serve  
2 different purposes. Deposits address the overall creditworthiness of a party and are not  
3 tailored to the risk that is specific to a particular dispute. Because the deposit amount is  
4 capped, if CA disputes AT&T Florida's bills month after month, the maximum deposit  
5 amount will not cover the amount of the dispute. Escrow provisions are designed to  
6 ensure that funds are available to pay for charges that are disputed after the dispute is  
7 resolved.

8 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUES 23a, 23b, AND 23c?**

9 A. By adopting AT&T Florida's proposed escrow language, which is fair and reasonable.

10 **ISSUE 24(i): SHOULD THE ICA PROVIDE THAT THE BILLING PARTY MAY ONLY**  
11 **SEND A DISCONTINUANCE NOTICE FOR UNPAID UNDISPUTED**  
12 **CHARGES?**

13 **ISSUE 24(ii): SHOULD THE NON-PAYING PARTY HAVE 15 OR 30 CALENDAR**  
14 **DAYS FROM THE DATE OF A DISCONTINUANCE NOTICE TO**  
15 **REMIT PAYMENT?**

16 **Affected Contract Provision: GT&C § 12.2**

17 **Q. HOW IS YOUR REBUTTAL TESTIMONY ON ISSUE 24 ORGANIZED?**

18 A. CA and AT&T Florida have a disagreement about exactly what contract language is in  
19 dispute for Issue 24, and they have a closely related disagreement about Issue 12, which  
20 AT&T Florida has reported as resolved but which CA apparently regards as still open. I  
21 will begin by discussing this disagreement about the current status of Issues 12 and 24,  
22 and I will then discuss the substantive disputes.

23 **Status of Issues 12 and 24**



1 **Q. PLEASE EXPLAIN THE DISAGREEMENT ABOUT THE STATUS OF ISSUES**  
2 **12 AND 24.**

3 A. The starting point is the way the disputed language for those two issues looked on  
4 January 13, 2015, just before AT&T Florida took steps to narrow the issues. At that time,  
5 Issue 24 concerned GT&C section 12.2, which relates to the disconnection of services for  
6 non-payment, and Issue 12 concerned GT&C section 2.74 (in the definitions portion of  
7 the GT&C), which defined “Discontinuance Notice,” a term used in section 12.2. The  
8 disputed language looked like this, with agreed language in normal font; CA-proposed  
9 language in *bold italics*; and AT&T Florida-proposed language in **bold underline**:

10 2.74 “Discontinuance Notice” means the written Notice sent by the Billing  
11 Party to the other Party that notifies the Non-Paying Party that in order to  
12 avoid disruption or disconnection of the Interconnection Services, furnished  
13 under this Agreement, the Non-Paying Party must remit all Unpaid *and*  
14 *Undisputed* Charges to the Billing Party within **fifteen (15) calendar days**  
15 *thirty (30) calendar days* following receipt of the Billing Party’s Notice of  
16 Unpaid Charges.

17 12.2 Failure to pay *undisputed* charges shall be grounds for disconnection  
18 of Interconnection Services furnished under this Agreement. If a Party fails  
19 to pay any *undisputed* charges billed to it under this Agreement, including  
20 but not limited to any Late Payment Charges or Unpaid Charges, and any  
21 portion of such *undisputed* Unpaid Charges remain unpaid after the Bill Due  
22 Date, the Billing Party will send a Discontinuance Notice to such Non-Paying  
23 Party. The Non-Paying Party must remit all *undisputed* Unpaid Charges to  
24 the Billing Party within **fifteen (15) calendar days** *thirty (30) calendar days*  
25 of the Discontinuance Notice.

26 Substantive disagreements aside, that configuration of the disputed language was  
27 imperfect. Most obviously, the same two disagreements were wastefully teed up in both  
28 sections. Also, section 2.74, which was merely intended to define a term that was used in  
29 section 12.2, included unnecessary verbiage – which of course is what resulted in the  
30 unnecessary duplication of the disputes. Finally, the disputed language did not make as

1 clear as it should have that the main disagreement was about the escrow requirement –  
2 the same disagreement that is the subject of Issue 23.

3 **Q. WHAT DID AT&T FLORIDA DO ABOUT THOSE IMPERFECTIONS?**

4 A. AT&T Florida eliminated the unnecessary duplication of disputes in sections 2.74 and  
5 12.2 by dropping its proposed section 2.74 and moving the definition of “Discontinuance  
6 Notice” into section 12.2. Also, AT&T Florida modified its language in section 12.2 to  
7 make it more clear that the disagreement about the word "*undisputed*” was actually just  
8 another manifestation of the disagreement about whether disputed amounts should be  
9 paid into escrow.

10 **Q. DID AT&T FLORIDA COMMUNICATE THIS TO CA?**

11 A. Yes. On January 14, Dennis Friedman, on behalf of AT&T Florida, sent CA’s attorney  
12 (Kris Twomey) the email attached to this testimony as Exhibit PHP-10. The email said:

13 In order to narrow the parties’ differences, AT&T Florida is modifying  
14 its proposed language for two sections of the GT&C.

15 [The email then identified and displayed sections 2.74 and 2.12 as they  
16 appear above.]

17 There are two disagreements underlying the competing contract  
18 language: (i) whether disputed amounts must be paid into escrow  
19 (which is the subject of two other issues as well) and (ii) whether a  
20 Non-Paying Party should have fifteen days or thirty days to pay after  
21 receiving a discontinuance notice.

22 To simplify and clarify matters, AT&T Florida is withdrawing its  
23 proposed section 2.74 and moving the definition of “Discontinuance  
24 Notice” into 12.2 and modifying its proposed section 12.2 to read as  
25 follows:

26 12.2 For purposes of this section 12.2, to “pay” a bill means to pay all  
27 undisputed charges to the Billing Party and to pay all Disputed  
28 Amounts either to the Billing Party or into an escrow account in

1 accordance with Sections 11.9 and 11.10. If the Billed Party fails to  
2 pay any portion of a bill, including but not limited to any Late Payment  
3 Charges, by the Bill Due Date, the Billing Party may send a written  
4 Notice (“Discontinuance Notice”) informing such Non-Paying Party  
5 that in order to avoid disruption or disconnection of the Interconnection  
6 Services furnished under this Agreement, the Non-Paying Party must  
7 pay all unpaid amounts as provided above within fifteen (15) calendar  
8 days. If the Non-Paying Party fails to pay the bill in full as described  
9 herein within fifteen (15) calendar days of the Discontinuance Notice,  
10 the Billing Party may discontinue or disconnect Interconnection  
11 Services furnished under this Agreement.

12 **Q. NONE OF THAT LANGUAGE YOU JUST QUOTED IS SHOWN IN BOLD**  
13 **ITALICS OR BOLD UNDERLINE. WAS AT&T FLORIDA ASSUMING CA**  
14 **WOULD AGREE TO AT&T FLORIDA’S MODIFIED PROPOSAL FOR**  
15 **SECTION 12.2?**

16 A. Not at all. AT&T Florida understood that CA would still object to paying disputed  
17 amounts into escrow, and to the requirement to pay within 15 days after receipt of a  
18 Discontinuance Notice. Accordingly, counsel’s email went on to display section 12.2 as  
19 AT&T Florida believed it would look “taking into account CA’s positions as we  
20 understand them.” It then said, “Although we believe that section 12.2 as set forth  
21 immediately above accurately reflects CA’s positions, it [is] of course for CA to decide  
22 which portions of AT&T Florida’s language it opposes and what additional language it  
23 proposes. Please let us know by reply to this email whether you agree that the foregoing  
24 accurately displays the disputed language for section 12.2 and, if does not, what CA  
25 would propose.”

26 The email then stated that Issue 12 was resolved in its entirety and that Issue 24,  
27 concerning GT&C section 12.2, remained unresolved.

28 **Q. DID CA EVER SAY WHETHER IT AGREED OR DISAGREED WITH THE**  
29 **WAY AT&T FLORIDA DISPLAYED THE DISPUTED LANGUAGE IN**  
30 **MODIFIED SECTION 12.2?**

1 A. No.

2 **Q. WHAT DID HAPPEN AFTER MR. FRIEDMAN SENT THAT EMAIL TO MR.**  
3 **TWOMEY ON JANUARY 14?**

4 A. The following email sequence ensued:

5 January 22, Twomey to Friedman: “Perhaps I'm missing something, but I don't  
6 think this actually clarifies anything. Instead, it just seems to combine two separate issues  
7 that are already clear and under consideration by PSC staff. Happy to have a call and  
8 discuss if needed.” (Exhibit PHP-11.)

9 January 23, Friedman to Twomey: “I'd be glad to talk. As it happens, though, I  
10 hope to send you early next week proposals that may resolve two other issues. We may  
11 want to discuss those as well, so let's plan to find a time to talk in the middle of next  
12 week. When we talk, I hope to be able to convince you that the modifications AT&T is  
13 making to its proposed language do in fact simplify and clarify matters. Please note,  
14 though, that even if I do not succeed at that, AT&T is deleting its proposed GT&C section  
15 2.74 and modifying its proposal for GT&C section 12.2 as indicated below.” (Exhibit  
16 PHP-12.)

17 January 27, Friedman to Twomey: “Further on [the subject of GT&C sections  
18 2.74 and 12.2], do you want to set up a time to talk this week?” (Exhibit PHP-13.)

19 January 27, Twomey to Friedman: “I have asked Mike for his input and will get  
20 back to you asap.” (Exhibit PHP-14.)

21 February 6, Friedman to Twomey (following no further word from CA): “We're  
22 awaiting CA's response on . . . disputed language for Issues 24(i) and 24(ii) (see my  
23 emails of 1/14 and 1/23). Please let me know where we stand.” (Exhibit PHP-15.)

1 February 11, Friedman to Twomey (after emails re other open items): “There’s  
2 another open item that you and I have communicated about; it’s the subject of the  
3 attached email string.<sup>10</sup> As a reminder, that item does not involve a proposal to resolve  
4 an issue. As explained in the email, Issue 12 is now resolved (by AT&T’s withdrawal of  
5 GT&C 2.74), and the contract language that is the subject of Issue 24 has changed. The  
6 only question is whether we have accurately portrayed (near the bottom of the email  
7 string) CA’s position with respect to AT&T’s modified language for GT&C 12.2, which  
8 I’m reasonably confident we have.” (Exhibit PHP-16.)

9 **Q. WAS THAT THE END OF THE PARTIES’ COMMUNICATIONS ON THE**  
10 **SUBJECT?**

11 A. Yes. As you can see, AT&T Florida tried its best to get a response from CA, but no  
12 meaningful response was ever forthcoming.

13 **Q. DOES MR. RAY ADDRESS THIS IN HIS TESTIMONY?**

14 A. Sort of. He says nothing about it in his testimony on Issue 24, but he does claim that  
15 Issue 12 is still open because “CA has not accepted” AT&T Florida’s “proposal” to  
16 resolve it. (Ray Direct at p. 14, lines 18-24.)

17 **Q. HOW DO YOU RESPOND?**

18 A. Mr. Ray is mistaken. AT&T Florida did not “propose” to resolve Issue 12, as Mr. Ray  
19 puts it. Rather, AT&T Florida resolved Issue 12 by withdrawing the language that was  
20 the subject of Issue 12; AT&T Florida does not need CA’s concurrence to withdraw its  
21 own language. Mr. Ray is also mistaken when he says (at p. 14, lines 21-22) that

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<sup>10</sup> The attached email string was Mr. Friedman’s January 23 email to Mr. Twomey, reflected in Exhibit PHP-12.

1 “AT&T’s counsel acknowledged CA’s continuing disagreement via email on January  
2 23<sup>rd</sup>.” What Mr. Friedman acknowledged in that email was not a disagreement about  
3 whether Issue 12 was still open – he plainly said it was not. Rather, he acknowledged  
4 that there was disagreement about whether this did or did not simplify and clarify  
5 matters.

6 **Q. DOES MR. RAY SAY ANYTHING ELSE IN SUPPORT OF CA’S OPPOSITION**  
7 **TO AT&T FLORIDA’S TREATMENT OF ISSUES 12 AND 24?**

8 A. Yes. He states that “combining the issues adds confusion rather than any clarification.”  
9 Ray Direct at 14, lines 19-20.

10 **Q. WHAT CONFUSION DOES MR. RAY SAY AT&T FLORIDA HAS CREATED?**

11 A. His testimony makes no effort to identify the confusion. AT&T Florida therefore asked  
12 for elaboration in a discovery request (Interrogatory No. 64), and CA’s response  
13 effectively acknowledges that there is no confusion. All CA was able to come up with  
14 was, “CA presumes the issues list has already been divided among PSC staffers. As  
15 such, combining the two could introduce unnecessary confusion to the docket without  
16 much tangible benefit.” See Exhibit PHP-17.

17 **Q. DID THE CHANGES IN FACT SIMPLIFY AND CLARIFY MATTERS?**

18 A. Of course they did. We now have one disputed contract section where before we had  
19 two. We now have no unnecessary duplication of disputes as we did before. And it is  
20 now clear that in order to determine how section 12.2 will read in the parties’ ICA, the  
21 Commission only needs to decide (i) the escrow issue that is already the subject of Issue

1 23; and (ii) the question whether payment must be made within 15 days or 30 days after a  
2 Discontinuance Notice, where before that was not as clear.

3 **Q. WHAT IS YOUR CONCLUSION CONCERNING THE STATUS OF ISSUES 12**  
4 **AND 24?**

5 A. Issue 12 is indeed resolved. The ICA need not include and will not include a definition  
6 of “Discontinuance Notice” in GT&C section 2.74, and it was perfectly appropriate for  
7 AT&T Florida to withdraw that definition. And for purposes of resolving Issue 24, the  
8 disputed language in GT&C section 12.2 is as follows:

9 For purposes of this Section 12.2, to “pay” a bill means to pay all  
10 undisputed charges to the Billing Party **and to pay all Disputed Amounts**  
11 **either to the Billing Party or into an escrow account in accordance**  
12 **with Sections 11.9 and 11.10.** If the Billed Party fails to pay any portion  
13 of a bill, including but not limited to any Late Payment Charges, by the  
14 Bill Due Date, the Billing Party may send a written Notice  
15 (“Discontinuance Notice”) informing such Non-Paying Party that in order  
16 to avoid disruption or disconnection of the Interconnection Services  
17 furnished under this Agreement, the Non-Paying Party must pay all  
18 *undisputed* unpaid amounts as provided above, within **fifteen (15) thirty**  
19 **(30)** calendar days. The Non-Paying Party must pay the bill in full as  
20 described herein within **fifteen (15) thirty (30)** calendar days of the  
21 Discontinuance Notice. If the Non-Paying Party does not pay as described  
22 herein within **fifteen (15) thirty (30)** calendar days of the Discontinuance  
23 Notice, the Billing Party may discontinue or disconnect Interconnection  
24 Services furnished under this Agreement.

25 If CA thought that depiction of the language did not correctly portray its positions, it had  
26 ample opportunity to say so, and it never did – even in Mr. Ray’s direct testimony.

27 **The substantive disputes**

28 **Q. WHAT ARE THE SUBSTANTIVE DISAGREEMENTS THAT ARE THE**  
29 **SUBJECT OF ISSUE 24?**

1 A. As the disputed language in GT&C section 12.2 shows, and as I said in my direct  
2 testimony, there are two disagreements: whether disputed amounts must be paid into  
3 escrow and whether the Non-Paying Party should be required to pay (to the Billing Party  
4 or into escrow) within 15 days or 30 days after receiving a Discontinuance Notice.

5 **Q. DOES MR. RAY'S DIRECT TESTIMONY ON ISSUE 24 (OR ON ISSUE 12) SAY**  
6 **ANYTHING ABOUT THE ESCROW REQUIREMENT THAT YOU WISH TO**  
7 **ADDRESS?**

8 A. Just one thing. Mr. Ray contends there is no need for disputed amounts to be escrowed  
9 because, "CA has already agreed that if either party seeks dispute resolution from the  
10 Commission and the Commission finds against CA that CA would be required to post a  
11 bond in order to appeal that decision." (Ray Direct at p. 14, lines 13-15.) I believe Mr.  
12 Ray is mistaken. I am not aware of, and cannot find, agreed language in the ICA that  
13 requires a bond in the situation Mr. Ray describes. In addition, Mr. Ray's argument  
14 would be unpersuasive even if there were such a provision. As I have explained, the  
15 reason for an escrow requirement is to avoid the situation where AT&T Florida  
16 eventually prevails on a billing dispute and CA does not have the wherewithal to pay  
17 what it owes. CA may already be without that wherewithal at the point in time when the  
18 Commission resolves a billing dispute in favor of AT&T Florida – most likely many  
19 months after the initial failure to pay. If that is the case, AT&T Florida would be left  
20 holding the bag, and it would be small comfort to know that CA was required to post a  
21 bond in order to appeal the decision.

22 **Q. DOES MR. RAY SAY ANYTHING ABOUT THE 15-DAY VS. 30-DAY**  
23 **DISAGREEMENT THAT YOU ADDRESSED IN YOUR DIRECT TESTIMONY?**

24 A. No. In fact, Mr. Ray says nothing whatsoever in support of CA's proposal.



1 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 24?**

2 A. It should approve AT&T Florida's proposed language for GT&C section 12.2, which  
3 reasonably requires a party that disputes a bill to pay the disputed amount into escrow  
4 (subject to several exceptions) and requires a party that receives a Discontinuance Notice  
5 to pay the unpaid amounts within 15 days, either to the other party or, if the amounts are  
6 disputed, into escrow.

7 **ISSUE 25: SHOULD THE ICA OBLIGATE THE BILLING PARTY TO PROVIDE**  
8 **ITEMIZED DETAIL OF EACH ADJUSTMENT WHEN CREDITING THE**  
9 **BILLED PARTY WHEN A DISPUTE IS RESOLVED IN THE BILLED**  
10 **PARTY'S FAVOR?**

11 **Affected Contract Provision: GT&C § 11.13.1**

12 **Q. MR. RAY STATES THAT THE ONLY REASON IT WOULD BE IMPOSSIBLE**  
13 **FOR AT&T FLORIDA TO PROVIDE THE DETAIL CA'S LANGUAGE WOULD**  
14 **REQUIRE WOULD BE BECAUSE AT&T FLORIDA'S "BILLING RECORDS**  
15 **ARE ENTIRELY UNRELIABLE" (RAY DIRECT AT P. 26, LINES 21-24). HOW**  
16 **DO YOU RESPOND?**

17 A. Mr. Ray is wrong. CA's language would require AT&T Florida to provide itemized  
18 detail of individual credits associated with individual dispute reference numbers. As I  
19 explained in my Direct Testimony (at p. 53), AT&T Florida is willing to provide that  
20 information when it can. However, there are circumstances when that may not be  
21 possible.

22 **Q. CAN YOU PROVIDE AN EXAMPLE OF WHEN AT&T FLORIDA MIGHT BE**  
23 **UNABLE TO PROVIDE DETAIL IN THE MANNER CA'S LANGUAGE**  
24 **WOULD REQUIRE?**

25 A. Yes. Suppose the parties had 20 disputes totaling \$30,000 on a single billing account  
26 number ("BAN"). Suppose also that the parties agreed to resolve all 20 disputes together  
27 with CA's payment of \$20,000 and AT&T Florida's credit of \$10,000. AT&T Florida

1 would credit CA's bill for \$10,000, but because of the bulk nature of the settlement  
2 agreement, AT&T Florida could not provide a specific credit amount for each of the 20  
3 disputes. Nor would such detail be necessary to effectuate the settlement. Similarly,  
4 CA's payment of \$20,000 would go towards the BAN associated with the disputes, but  
5 not towards any particular billed items. The end result would be that the BAN would  
6 show a zero balance (assuming all undisputed amounts were paid) and all the disputes  
7 would be closed.

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

9 A. The Commission should reject CA's language that would contractually obligate AT&T  
10 Florida to provide certain detail on credit adjustments even when it is impossible for  
11 AT&T Florida to comply.

12 **ISSUE 26: WHAT IS THE APPROPRIATE TIME FRAME FOR A PARTY TO**  
13 **DISPUTE A BILL?**

14 **Affected Contract Provision: GT&C § 13.1.2**

15 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

16 A. The parties have resolved it.

17 **ISSUE 27: SHOULD THE ICA PERMIT COMMUNICATIONS AUTHORITY TO**  
18 **DISPUTE A CLASS OF RELATED CHARGES ON A SINGLE DISPUTE**  
19 **NOTICE?**

20 **Affected Contract Provision: GT&C § 13.4.3.8**

21 **Q. MR. RAY PROVIDES AN EXAMPLE OF WHEN CA WOULD FILE A BULK**  
22 **BILLING DISPUTE (RAY DIRECT AT P. 27, LINES 18-21). HOW DO YOU**  
23 **RESPOND?**

1 A. Mr. Ray uses as an example the situation where AT&T Florida billed CA for  
2 interconnection trunks, claiming that AT&T Florida is not entitled to assess such charges.  
3 The question regarding charges for interconnection trunks is addressed in this arbitration  
4 (Issues 14b(ii) and 66), so it is presumptuous of Mr. Ray to assume that AT&T Florida's  
5 billing for those trunks would be improper.

6 **Q. WOULD EXCLUSION OF CA'S PROPOSED LANGUAGE PRECLUDE CA**  
7 **FROM REQUESTING THAT AT&T FLORIDA ACCEPT A BULK BILLING**  
8 **DISPUTE?**

9 A. No. As I explained in my Direct Testimony (at pp. 57-58), AT&T Florida would  
10 consider a bulk billing dispute request on an individual case basis.

11 **Q. WOULD AT&T FLORIDA BE WILLING TO ACCEPT A SINGLE BILLING**  
12 **DISPUTE FOR A CLASS OF "RELATED" CHARGES?**

13 A. Perhaps – it would depend on whether the disputes were sufficiently “related” that AT&T  
14 Florida could accommodate them as a single dispute. For example, if CA prevailed on  
15 the issue of interconnection trunk charges and AT&T Florida failed to update its billing  
16 tables to zero rate those charges specifically for CA,<sup>11</sup> it might make sense for the parties  
17 to agree to handle those charges on a single dispute. However, if CA filed a single  
18 dispute for the nonrecurring charges for all types of UNE loops, because CA considered  
19 those charges to be “related,” AT&T Florida would probably not be able to accommodate  
20 all the disputes on a bulk basis. This is because different loops have different charges,  
21 making the disputes unique. CA's language that would require AT&T Florida to accept a  
22 single dispute for a “related” class of charges could lead to disputes.

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<sup>11</sup> Other Florida CLECs pay AT&T Florida's interconnection trunk charges pursuant to their ICAs.

1 **Q. MR. RAY NOTES THAT AN ICA BETWEEN TERRA NOVA AND VERIZON**  
2 **CONTAINS A PROVISION SIMILAR TO WHAT CA PROPOSES FOR ITS ICA**  
3 **WITH AT&T FLORIDA (RAY DIRECT AT P. 28, LINES 1-3). DOES THE**  
4 **TERRA NOVA – VERIZON ICA HAVE ANY RELEVANCE IN THIS**  
5 **ARBITRATION?**

6 A. No. AT&T Florida is not Verizon, and an ICA between Verizon and a CLEC in Florida  
7 has nothing to do with AT&T Florida.

8 **Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

9 A. The Commission should reject CA's proposed language for GT&C section 13.4.3.8 that  
10 would obligate AT&T Florida to accept a single dispute for a group of allegedly related  
11 bill entries.

12 **ISSUE 28(i): SHOULD A PARTY THAT DISPUTES A BILL BE REQUIRED TO PAY**  
13 **THE DISPUTED AMOUNT INTO AN INTEREST-BEARING ESCROW**  
14 **ACCOUNT PENDING RESOLUTION OF THE DISPUTE?**

15 **Affected Contract Provision: GT&C § 13.4.4**

16 **Q. PLEASE COMMENT ON CA'S TESTIMONY ON THIS ISSUE (RAY DIRECT**  
17 **AT P. 28, LINE 10 – P. 29, LINE 5).**

18 A. Mr. Ray states that Issue 28(ii) has been resolved, which is correct, but then he goes on to  
19 discuss Issue 28(i). Issue 28(i), however, was resolved at the same time as Issue 28(ii).  
20 Both issues concerned AT&T Florida's proposed language for GT&C section 13.4.4, and  
21 AT&T Florida withdrew that language and thus resolved Issue 28 in its entirety. See  
22 Exhibit PHP-18.

1 **ISSUE 29(i): SHOULD THE ICA PERMIT A PARTY TO BRING A COMPLAINT**  
2 **DIRECTLY TO THE COMMISSION, BYPASSING THE DISPUTE**  
3 **RESOLUTION PROVISIONS OF THE ICA?**

4 **ISSUE 29(ii): SHOULD THE ICA PERMIT A PARTY TO SEEK RELIEF FROM THE**  
5 **COMMISSION FOR AN ALLEGED VIOLATION OF LAW OR**  
6 **REGULATION GOVERNING A SUBJECT THAT IS COVERED BY THE**  
7 **ICA?**

8 **Affected Contract Provision: GT&C § 13.9.1**

9 **Q. MR. RAY STATES THAT AT&T FLORIDA “SEEMS TO PREFER ITS**  
10 **ELECTIVE ARBITRATION PROCEDURE” (RAY DIRECT AT P. 29, LINES 14-**  
11 **15). HOW DO YOU RESPOND?**

12 A. That is nonsense. AT&T Florida proposed comprehensive dispute resolution terms (most  
13 of which are agreed) that have nothing to do with elective arbitration. Mr. Ray states that  
14 CA agreed to the elective arbitration language because it is elective, but then he goes on  
15 to state that CA would never elect arbitration based on his assertion that AT&T Florida  
16 would have an unfair advantage in a commercial arbitration setting (Ray Direct at p. 29,  
17 lines 16-20). Of course, all of that rhetoric is irrelevant to the issue presented for  
18 arbitration.

19 **Q. MR. RAY ALSO ALLEGES THAT AT&T FLORIDA DID NOT NEGOTIATE IN**  
20 **GOOD FAITH WITH THE INTENTION OF DELAYING CA’S MARKET**  
21 **ENTRY AND TO INCREASE CA’S COSTS (RAY DIRECT AT P. 30, LINES 4-8).**  
22 **HOW DO YOU RESPOND?**

23 A. There is no foundation for Mr. Ray’s allegations. It is always better when two parties can  
24 reach a negotiated agreement. Arbitration is the last resort and one AT&T Florida seeks  
25 to avoid whenever possible. AT&T Florida asks requesting carriers to sign a non-  
26 disclosure agreement (“NDA”) to cover the parties’ discussions during negotiations. This  
27 allows both parties to negotiate freely and discuss potential “trades” that are inherent in  
28 any negotiation, without concern that an offer for trade would be portrayed as a

1 concession on that issue in an arbitration such as this one. CA adamantly refused AT&T  
2 Florida's repeated requests that CA sign an NDA. Despite the lack of an NDA, however,  
3 AT&T Florida still responded to each of CA's proposed revisions to AT&T Florida's  
4 offered language and provided its reasoning for rejecting CA's proposals with the hope  
5 that the parties could reach agreement. The parties' failure to resolve all language  
6 disagreements does not constitute bad faith negotiations on AT&T Florida's part.<sup>12</sup>

7 **Q. REGARDING THE DISPUTE RESOLUTION PROCESS, MR. RAY ALSO**  
8 **CLAIMS THAT AT&T FLORIDA COULD USE ITS MONOPOLY POWER TO**  
9 **“CAUSE SEVERE HARM TO CA” (RAY DIRECT AT P. 30, LINES 10-11).**  
10 **PLEASE RESPOND.**

11 A. That is nonsense. The dispute resolution process is fair and equitable and, as I stated, CA  
12 agreed to most of the language memorializing the process. Either party can invoke the  
13 dispute resolution terms, and Mr. Ray's statement that “CA may not have the luxury of  
14 invoking Dispute Resolution while AT&T runs out the clock”<sup>13</sup> is equally nonsensical.  
15 Dispute resolution is certainly not a luxury – it's a reasonable and efficient way to handle  
16 disputes. Further, I have no idea what Mr. Ray means by “runs out the clock” or how  
17 that would be harming CA's customers, and Mr. Ray offers no evidence to support his  
18 allegations.

19 **Q. MR. RAY ALSO RAISES DISPUTES HE HAS HAD WITH AT&T FLORIDA**  
20 **WHEN HE HAS REPRESENTED OTHER CLECS (RAY DIRECT AT P. 30,**  
21 **LINES 15-17). DO YOU HAVE ANY COMMENTS?**

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<sup>12</sup> CA offered language during negotiations that it replaced with entirely new language (that AT&T Florida had never seen) when CA filed its Petition, *e.g.*, CA's proposal for a five-year term in Issue 18.

<sup>13</sup> Ray Direct at p. 30, lines 11-12.

1 A. Yes. Mr. Ray has demonstrated that the dispute resolution process works as intended. In  
2 other words, when two carriers are unable to resolve their differences by themselves,  
3 either party may seek the Commission's assistance to facilitate resolution.

4 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUES 29(i) AND 29(ii)?**

5 A. The Commission should reject CA's proposed language, because it is inconsistent both  
6 with the parties' prudent agreement to engage in informal dispute resolution before  
7 bringing a complaint to the Commission (Issue 29(i)), and with the fact that the parties  
8 will be bound by the terms of their ICA, not by the laws and regulations pursuant to  
9 which the ICA was made (Issue 29(ii)).

10 **ISSUE 30(i): SHOULD THE JOINT AND SEVERAL LIABILITY TERMS BE**  
11 **RECIPROCAL?**

12 **ISSUE 30(ii): CAN A THIRD PARTY THAT PLACES AN ORDER UNDER THE ICA**  
13 **USING COMMUNICATIONS AUTHORITY'S COMPANY CODE OR**  
14 **IDENTIFIER BE JOINTLY AND SEVERALLY LIABLE UNDER THE**  
15 **ICA?**

16 **Affected Contract Provision: GT&C § 17.1**

17 **Q. DOES MR. RAY OFFER ANY TESTIMONY FOR THIS ISSUE THAT YOU DID**  
18 **NOT ADDRESS IN YOUR DIRECT TESTIMONY?**

19 A. No. See my Direct Testimony at pages 64-65. The Commission should adopt AT&T  
20 Florida's language in GT&C section 17.1, which makes all entities placing orders on  
21 CA's behalf jointly and severally liable. CA's language should be rejected.

22 **ISSUE 32: SHALL THE PURCHASING PARTY BE PERMITTED TO NOT PAY**  
23 **TAXES BECAUSE OF A FAILURE BY THE PROVIDING PARTY TO**  
24 **INCLUDE TAXES ON AN INVOICE OR TO STATE A TAX**  
25 **SEPARATELY ON SUCH INVOICE?**

26 **Affected Contract Provision: GT&C § 37.1**

1 **Q. DO YOU HAVE ANY COMMENTS REGARDING MR. RAY’S TESTIMONY**  
2 **FOR THIS ISSUE?**

3 A. Yes. Mr. Ray simply says that CA needs to see taxes as a separate line item on the bill to  
4 audit its bill and to lodge disputes. AT&T Florida generally agrees, which is why  
5 language stating that taxes will be shown as a separate line item is not in dispute. AT&T  
6 Florida adds the qualifier “whenever possible” to accommodate the unlikely situation  
7 where it would not be possible for AT&T Florida to list taxes separately, as I explained in  
8 my Direct Testimony (at p. 65). However, Mr. Ray does not address the remaining  
9 language in dispute in GT&C section 37.1, which is whether CA remains liable for  
10 unbilled taxes.

11 **Q. SHOULD CA BE EXCUSED FROM PAYING LEGITIMATE TAXES IF THEY**  
12 **ARE NOT SEPARATELY LISTED ON AT&T FLORIDA’S BILL?**

13 A. No. CA should not be excused from its obligation to pay legitimate taxes based on the  
14 appearance of AT&T Florida’s bills. As I said, Mr. Ray offered no reason why AT&T  
15 Florida’s language should be rejected.

16 **Q. HOW SHOULD THE COMMISSION DECIDE THIS ISSUE?**

17 A. The Commission should adopt AT&T Florida’s language stating that, whenever possible,  
18 AT&T Florida will include and show taxes separately on its bills to CA, and that CA is  
19 not excused from paying its taxes if a tax is omitted from the bill or otherwise not  
20 separately identified.



1 **ISSUE 35: SHOULD THE DEFINITION OF “ENTRANCE FACILITIES” EXCLUDE**  
2 **INTERCONNECTION ARRANGEMENTS WHERE THE POI IS WITHIN**  
3 **AN AT&T FLORIDA SERVING WIRE CENTER AND**  
4 **COMMUNICATIONS AUTHORITY PROVIDES ITS OWN TRANSPORT**  
5 **ON ITS SIDE OF THE POI?**

6 **Affected Contract Provision: Net. Int. § 2.9**

7 **Q. MR. RAY STATES THAT “AT&T’S DEFINITION OF ENTRANCE FACILITIES**  
8 **IMPLIES THAT AT&T COULD CHARGE FOR ENTRANCE FACILITIES**  
9 **REGARDLESS OF WHERE THE POI IS LOCATED” (RAY DIRECT AT P. 34,**  
10 **LINES 12-13). DO YOU AGREE?**

11 A. No. First of all, it is not “AT&T’s” definition of Entrance Facilities. The parties have  
12 agreed to the definition of Entrance Facilities.<sup>14</sup> That definition says nothing about when  
13 AT&T Florida would or would not charge for Entrance Facilities, which is appropriate.  
14 Second, a definition should simply define the term – terms and conditions regarding the  
15 application of that term rightfully appear elsewhere in the ICA. And that is the case for  
16 Entrance Facilities. The terms and conditions for CA’s interconnection with AT&T  
17 Florida using Entrance Facilities are set forth in Net. Int. section 3.3.2, and the associated  
18 rates are in the Pricing Sheets. As I explained in my Direct Testimony (at p. 66), CA has  
19 three options for interconnection with AT&T Florida’s network at each location where it  
20 chooses to interconnect.<sup>15</sup> If CA interconnects with AT&T Florida via collocation  
21 (section 3.3.1) or meet point (section 3.3.3), and not leasing Entrance Facilities (section  
22 3.3.2), then of course AT&T Florida will not charge for Entrance Facilities.

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<sup>14</sup> Agreed language in Net. Int. section 2.9 states: “‘Entrance Facilities’ are the transmission facilities (typically wires or cables) that connect CLEC’s network with AT&T-21STATE’s network for the mutual exchange of traffic. These Entrance Facilities connect CLEC’s network from CLEC’s Switch or point of presence (“POP”) within the LATA to the AT&T-21STATE Serving Wire Center of such Switch or POP for the transmission of telephone exchange service and/or exchange access service.”

<sup>15</sup> For example, if CA interconnected with AT&T Florida at two points in LATA 460 (Miami), CA could establish a collocation in one location and lease Entrance Facilities at another.

1 **Q. DO YOU HAVE ANY OTHER COMMENTS REGARDING MR. RAY'S**  
2 **TESTIMONY FOR THIS ISSUE?**

3 A. I agree with the basic premise that AT&T Florida cannot charge for Entrance Facilities  
4 when CA does not lease Entrance Facilities. But it seems evident when Mr. Ray's  
5 testimony is read within the context of CA's responses to Staff's discovery requests<sup>16</sup> that  
6 CA does not want to be charged for CA's use of *any* facilities within AT&T Florida's  
7 central office. Of course, that position is unrelated to Entrance Facilities because  
8 Entrance Facilities always extend outside the central office. Mr. Ray says nothing further  
9 that I did not fully address in my Direct Testimony for this issue (at pp. 66-70).

10 **Q. HOW SHOULD THE COMMISSION DECIDE ISSUE 35?**

11 A. The Commission should reject CA's additional language, which is confusing, open to  
12 differing interpretations, inconsistent with agreed language, and would likely lead to  
13 disputes.

14 **ISSUE 36: SHOULD THE NETWORK INTERCONNECTION ARCHITECTURE**  
15 **PLAN SECTION OF THE ICA PROVIDE THAT COMMUNICATIONS**  
16 **AUTHORITY MAY LEASE TELRIC-PRICED FACILITIES TO LINK**  
17 **FROM ONE POI TO ANOTHER?**

18 **Affected Contract Provision: Net. Int. § 3.2.4.6**

19 **Q. DOES MR. RAY SAY ANYTHING IN HIS TESTIMONY FOR ISSUE 36 THAT**  
20 **YOU HAVE NOT ALREADY ADDRESSED IN YOUR DIRECT TESTIMONY?**

21 A. No. Mr. Ray's testimony quotes verbatim CA's Comments, which I addressed in my  
22 Direct Testimony (at pp. 71-73). The Commission should reject CA's additional

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<sup>16</sup> See Exhibits PHP-6 and PHP-7.

1 language in Net. Int. section 3.2.4.6 because CA's language is unnecessary and could  
2 lead to disputes.

3 **ISSUE 37: SHOULD COMMUNICATIONS AUTHORITY BE SOLELY**  
4 **RESPONSIBLE FOR THE FACILITIES THAT CARRY**  
5 **COMMUNICATIONS AUTHORITY'S OS/DA, E911, MASS CALLING,**  
6 **THIRD PARTY AND MEET POINT TRUNK GROUPS?**

7 **Affected Contract Provision: Net. Int. § 3.2.6**

8 **Q. MR. RAY OFFERS TESTIMONY FOR THIS ISSUE ONLY WITH REGARD TO**  
9 **911 TRUNKS (RAY DIRECT AT P. 35). DOES THAT MEAN THE**  
10 **COMMISSION SHOULD ADOPT AT&T FLORIDA'S LANGUAGE FOR THE**  
11 **OTHER TRUNK GROUPS?**

12 A. Yes. Mr. Ray made clear that CA has no objection to AT&T Florida's language except  
13 for the reference to 911 trunks (Ray Direct at p. 35, line 17). That leaves only the  
14 facilities used for 911 trunk groups for the Commission to address in Issue 37.

15 **Q. DOES MR. RAY ADEQUATELY EXPLAIN WHY CA SHOULD NOT BE**  
16 **RESPONSIBLE FOR THE FACILITIES THAT CARRY 911 TRUNKS?**

17 A. No. Mr. Ray focuses on the fact that the county pays AT&T Florida for the trunks, but  
18 he ignores entirely the cost of the *facilities* over which those trunks ride. As I explained  
19 in my Direct Testimony,<sup>17</sup> CA is responsible for the cost of those facilities (whether self-  
20 provided, leased from another carrier, or leased from AT&T Florida), which the counties  
21 do not pay for.

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

23 A. The Commission should reject CA's language that would improperly make AT&T  
24 Florida financially responsible for a portion of the facilities that carry CA's ancillary

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<sup>17</sup> Pellerin Direct at p. 76, lines 1-18 and p. 78, lines 2-6.

1 services trunks (*i.e.*, OS/DA, E911, HVCI, and Third Party) and that directly conflicts  
2 with other provisions in the ICA.

3 **ISSUE 42: SHOULD COMMUNICATIONS AUTHORITY BE OBLIGATED TO PAY**  
4 **FOR AN AUDIT WHEN THE PLF, PLU AND/OR PIU FACTORS IT**  
5 **PROVIDES AT&T FLORIDA ARE OVERSTATED BY 5% OR MORE OR**  
6 **BY AN AMOUNT RESULTING IN AT&T FLORIDA UNDER-BILLING**  
7 **COMMUNICATIONS AUTHORITY BY \$2,500 OR MORE PER MONTH?**

8 **Affected Contract Provision: Net. Int. § 6.13.3.5**

9 **Q. WHAT IS THE STATUS OF THIS ISSUE?**

10 A. The parties have resolved it.

11 **ISSUE 43(i): IS THE BILLING PARTY ENTITLED TO ACCRUE LATE PAYMENT**  
12 **CHARGES AND INTEREST ON UNPAID INTERCARRIER**  
13 **COMPENSATION CHARGES?**

14 **ISSUE 43(ii): WHEN A BILLING DISPUTE IS RESOLVED IN FAVOR OF THE**  
15 **BILLING PARTY, SHOULD THE BILLED PARTY BE OBLIGATED TO**  
16 **MAKE PAYMENT WITHIN 10 BUSINESS DAYS OR 30 BUSINESS**  
17 **DAYS?**

18 **Affected Contract Provision: Net. Int. § 6.13.7**

19 **Q. DOES MR. RAY OFFER ANY TESTIMONY FOR ISSUE 43 THAT YOU DID**  
20 **NOT ADDRESS IN YOUR DIRECT TESTIMONY?**

21 A. No. Mr. Ray simply regurgitated CA's position statement set forth in its Comments,  
22 which I addressed in my Direct Testimony (at pp. 81-84). The Commission should i)  
23 adopt AT&T Florida's language stating that both interest and late payment charges may  
24 accrue on unpaid intercarrier compensation; and ii) find that ten business days is the time  
25 within which the billed party shall pay the billing party following resolution of a dispute  
26 in favor of the billed party and adopt AT&T Florida's language so stating.

1 **ISSUE 45: HOW SHOULD THE ICA DESCRIBE WHAT IS MEANT BY A VACANT**  
2 **PORTED NUMBER?**

3 **Affected Contract Provision: LNP § 3.1.4**

4 **Q. MR. RAY ASSERTS THAT AT&T FLORIDA’S LANGUAGE IS “ANTI-**  
5 **COMPETITIVE” AND “DENIES THE END USER A CHOICE OF PROVIDER**  
6 **WITHOUT CAUSE” (RAY DIRECT AT P. 40, LINES 7-9). HOW DO YOU**  
7 **RESPOND?**

8 A. Mr. Ray is wrong on both counts. I explained fully in my Direct Testimony how  
9 telephone number assignments and number portability work, and I provided examples to  
10 demonstrate the fairness of that system.<sup>18</sup> Further, Mr. Ray fails to support his assertion  
11 that the industry practice of releasing telephone numbers to the carrier owning the NXX  
12 code denies an end user the ability to select the local service provider of his choice. He  
13 does not because he cannot.

14 **Q. PLEASE EXPLAIN.**

15 A. Mr. Ray begins with the mistaken premise that an end user (Ms. Smith) can convey her  
16 telephone number to the next resident (Mr. Jones) when she moves out, which is simply  
17 not the case.<sup>19</sup> He then extrapolates that concept to conclude that if Ms. Smith cannot  
18 pass along her telephone number to Mr. Jones, Mr. Jones must select AT&T Florida as  
19 his local service provider. Of course, that is absurd. If Mr. Jones wants service with CA,  
20 he can simply contact CA and place an order for service. CA would then assign Mr.  
21 Jones’ service a telephone number from CA’s inventory of available numbers.

22 **Q. HOW SHOULD THE COMMISSION DECIDE ISSUE 45?**

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<sup>18</sup> Pellerin Direct at pp. 85-88.

<sup>19</sup> Pellerin Direct at p. 87.

1 A. The Commission should adopt AT&T Florida’s language in LNP section 3.1.4, because  
2 AT&T Florida’s description of when a ported number is vacant is consistent with  
3 industry treatment of ported numbers and CA’s is not.

4 **ISSUE 60: SHOULD COMMUNICATIONS AUTHORITY BE PROHIBITED FROM**  
5 **OBTAINING RESALE SERVICES FOR ITS OWN USE OR SELLING**  
6 **THEM TO AFFILIATES?**

7 **Affected Contract Provision: Resale § 3.2**

8 **Q. MR. RAY STATES THAT AT&T FLORIDA “SHOULD HAVE NO INPUT INTO**  
9 **HOW CA DESIGNS ITS NETWORK OR PROVISIONS ITS CUSTOMERS”**  
10 **(RAY DIRECT AT P. 49, LINE 4). HOW DO YOU RESPOND?**

11 A. I generally agree. However, when CA elects to provision its customers by reselling  
12 AT&T Florida’s service, CA is bound by the reasonable limits that are part and parcel of  
13 section 251(c)(4) and the FCC’s implementing rules. That means that CA is not entitled  
14 to resell AT&T Florida’s services to itself or its affiliates.

15 **Q. DOES MR. RAY OFFER ANY TESTIMONY IN SUPPORT OF CA’S POSITION**  
16 **THAT YOU DID NOT ADDRESS IN YOUR DIRECT TESTIMONY?**

17 A. No. With the exception of the quotation to which I responded above, Mr. Ray’s  
18 testimony on this issue is taken verbatim from CA’s Comments. See my Direct  
19 Testimony for this issue (at pp. 88-91). The Commission should adopt AT&T Florida’s  
20 language in Resale section 3.2.

21 **ISSUE 61: WHICH PARTY’S LANGUAGE REGARDING DETAILED BILLING**  
22 **SHOULD BE INCLUDED IN THE ICA?**

23 **Affected Contract Provision: Resale § 5.2.1**

24 **Q. MR. RAY STATES THAT CA CANNOT BILL ITS RESALE CUSTOMERS OR**  
25 **DISPUTE AT&T FLORIDA’S BILLS WITHOUT BILLING DETAIL (RAY**

1           **DIRECT AT P. 49, LINES 15-16 AND 18-20). DOES AT&T FLORIDA PROPOSE**  
2           **LANGUAGE THAT WOULD DENY CA BILLING DETAIL?**

3           A.     No. As I explained in my Direct Testimony (at p. 92), AT&T Florida's language was  
4           drafted by CA,<sup>20</sup> with the limited exception that AT&T Florida's language provides CA  
5           with the *option* of requesting billing detail. This is because AT&T Florida provides each  
6           CLEC, including CA, with the ability to select the level of billing detail it deems  
7           appropriate for its business needs. AT&T Florida provides a comprehensive CLEC  
8           Billing Guide on its CLEC Online website from which a CLEC can select the detail to  
9           appear on its bills. When completing its CLEC Profile, the CLEC has the responsibility  
10          to proactively select the specific billing detail it wants; AT&T Florida does not make  
11          those decisions on the CLEC's behalf. The same is true for CA.

12          **Q.     HAS CA EVEN REVIEWED THE CLEC BILLING GUIDE TO UNDERSTAND**  
13          **THE BILLING DETAIL AT&T FLORIDA OFFERS CLECS?**

14          A.     No. In response to AT&T Florida's Interrogatory No. 110, CA responded that CA has  
15          not reviewed AT&T Florida's Billing Guide. See Exhibit PHP-19. Mr. Ray's  
16          implication in testimony that CA will not have sufficient billing detail if its language in  
17          Resale section 5.2.1 is rejected is unsupported by the facts.

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

19          A.     The Commission should adopt AT&T Florida's language, because it will provide CA  
20          with the detailed billing information on resale lines it needs to bill its end users.

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<sup>20</sup> It is intuitive that CA would not have proposed the language it did during negotiations if the result would be an inadequate level of billing detail.

1 **ISSUE 66: FOR EACH RATE THAT COMMUNICATIONS AUTHORITY HAS**  
2 **ASKED THE COMMISSION TO ARBITRATE, WHAT RATE SHOULD**  
3 **BE INCLUDED IN THE ICA?**

4 **Affected Contract Provision: Pricing Sheet**

5 **Q. DOES MR. RAY PROVIDE ANY MEANINGFUL SUPPORT FOR CA'S**  
6 **PROPOSED INTERCONNECTION RATES?**

7 A. None whatsoever. Mr. Ray simply states that CA suggested rates that are similar to  
8 Verizon's rates, which have nothing to do with AT&T Florida's costs.

9 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE WITH RESPECT**  
10 **TO INTERCONNECTION?**

11 A. The Commission should adopt AT&T Florida's proposed rates for all the reasons set  
12 forth in my Direct Testimony.

13 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

14 A. Yes.



58. Issue 20: Admit that in the scenario hypothesized in the Ray Testimony (at p. 22, line 21 – p. 22, line 1) in which AT&T Florida “fail[s] to invoke the dispute resolution provisions of this Agreement,” CA could invoke those dispute resolution provisions itself.

CA Response: Admitted.

**From:** Friedman, Dennis G. <DFriedman@mayerbrown.com>  
**Sent:** Wednesday, January 14, 2015 2:10 PM  
**To:** 'Kristopher Twomey'  
**Cc:** HATCH, TRACY W (Legal)  
**Subject:** CA/AT&T Florida – Issues 12(i) and 24(i)

**Categories:** Red Category

Kris –

In order to narrow the parties' differences, AT&T Florida is modifying its proposed language for two sections of the GT&C.

The affected contract provisions are GT&C section 2.74, which is the subject of Issue 12, and GT&C section 12.2, which is the subject of Issue 24.

As matters now stand, those provisions read as follows, with agreed language in normal font; CA-proposed language in ***bold italics*** and AT&T Florida-proposed language in **bold underscore**.

- 2.74 "Discontinuance Notice" means the written Notice sent by the Billing Party to the other Party that notifies the Non-Paying Party that in order to avoid disruption or disconnection of the Interconnection Services, furnished under this Agreement, the Non-Paying Party must remit all Unpaid ***and Undisputed*** Charges to the Billing Party within **fifteen (15) calendar days thirty (30) calendar days** following receipt of the Billing Party's Notice of Unpaid Charges.
- 12.2 Failure to pay ***undisputed*** charges shall be grounds for disconnection of Interconnection Services furnished under this Agreement. If a Party fails to pay any ***undisputed*** charges billed to it under this Agreement, including but not limited to any Late Payment Charges or Unpaid Charges, and any portion of such ***undisputed*** Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party will send a Discontinuance Notice to such Non-Paying Party. The Non-Paying Party must remit all ***undisputed*** Unpaid Charges to the Billing Party within **fifteen (15) calendar days thirty (30) calendar days** of the Discontinuance Notice.

There are two disagreements underlying the competing contract language: (i) whether disputed amounts must be paid into escrow (which is the subject of two other issues as well) and (ii) whether a Non-Paying Party should have fifteen days or thirty days to pay after receiving a discontinuance notice.

To simplify and clarify matters, AT&T Florida is withdrawing its proposed section 2.74 and moving the definition of "Discontinuance Notice" into 12.2 and modifying its proposed section 12.2 to read as follows:

12.2 For purposes of this section 12.2, to "pay" a bill means to pay all undisputed charges to the Billing Party and to pay all Disputed Amounts either to the Billing Party or into an escrow account in accordance with Sections 11.9 and 11.10. If the Billed Party fails to pay any portion of a bill, including but not limited to any Late Payment Charges, by the Bill Due Date, the Billing Party may send a written Notice ("Discontinuance Notice") informing such Non-Paying Party that in order to avoid disruption or disconnection of the Interconnection Services furnished under this Agreement, the Non-Paying Party must pay all unpaid amounts as provided above

within fifteen (15) calendar days. If the Non-Paying Party fails to pay the bill in full as described herein within fifteen (15) calendar days of the Discontinuance Notice, the Billing Party may discontinue or disconnect Interconnection Services furnished under this Agreement.

Taking into account CA's positions as we understand them, we believe the provision as disputed would read as follows, using the same font conventions as above.

12.2 For purposes of this section 12.2, to "pay" a bill means to pay all undisputed charges to the Billing Party **and to pay all Disputed Amounts either to the Billing Party or into an escrow account in accordance with Sections 11.9 and 11.10.** If the Billed Party fails to pay any portion of a bill, including but not limited to any Late Payment Charges, by the Bill Due Date, the Billing Party may send a written Notice ("Discontinuance Notice") informing such Non-Paying Party that in order to avoid disruption or disconnection of the Interconnection Services furnished under this Agreement, the Non-Paying Party must pay all ***undisputed*** unpaid amounts as provided above, within ***fifteen (15) thirty (30)*** calendar days. The Non-Paying Party must pay the bill in full as described herein within ***fifteen (15) thirty (30)*** calendar days of the Discontinuance Notice. If the Non-Paying Party does not pay as described herein within ***fifteen (15) thirty (30)*** calendar days of the Discontinuance Notice, the Billing Party may discontinue or disconnect Interconnection Services furnished under this Agreement.

Although we believe that section 12.2 as set forth immediately above accurately reflects CA's positions, it of course for CA to decide which portions of AT&T Florida's language it opposes and what additional language it proposes. Please let us know by reply to this email whether you agree that the foregoing accurately displays the disputed language for section 12.2 and, if does not, what CA would propose.

In light of the foregoing, Issue 12 is resolved in its entirety (both 12(i) and 12(ii)).

Issue 24 remains (both 24(i) and 24(ii)).

Finally, Kris, I'd be glad to discuss this with you if you wish.

Dennis

**From:** Kristopher Twomey [<mailto:kris@lokt.net>]  
**Sent:** Thursday, January 22, 2015 8:07 PM  
**To:** Friedman, Dennis G.  
**Cc:** HATCH, TRACY W (Legal)  
**Subject:** Re: CA/AT&T Florida -- Issues 12(i) and 24(i)

Perhaps I'm missing something, but I don't think this actually clarifies anything. Instead, it just seems to combine two separate issues that are already clear and under consideration by PSC staff. Happy to have a call and discuss if needed.

Kris

**Law Office of Kristopher E. Twomey, P.C.**  
*Counsel to the Competition®*  
p:202 681-1850/f:202 517-9175

**From:** Friedman, Dennis G. <DFriedman@mayerbrown.com>  
**Sent:** Friday, January 23, 2015 2:52 PM  
**To:** Kristopher Twomey  
**Cc:** HATCH, TRACY W (Legal)  
**Subject:** RE: CA/AT&T Florida -- Issues 12(i) and 24(i)

Kris --

I'd be glad to talk.

As it happens, though, I hope to send you early next week proposals that may resolve two other issues.

We may want to discuss those as well, so let's plan to find a time to talk in the middle of next week.

When we talk, I hope to be able to convince you that the modifications AT&T is making to its proposed language do in fact simplify and clarify matters. Please note, though, that even if I do not succeed at that, AT&T is deleting its proposed GT&C section 2.74 and modifying its proposal for GT&C section 12.2 as indicated below.

Have a good weekend.

Dennis

---

**From:** Kristopher Twomey [mailto:kris@lokt.net]  
**Sent:** Thursday, January 22, 2015 8:07 PM  
**To:** Friedman, Dennis G.  
**Cc:** HATCH, TRACY W (Legal)  
**Subject:** Re: CA/AT&T Florida -- Issues 12(i) and 24(i)

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**Law Office of Kristopher E. Twomey, P.C.**  
*Counsel to the Competition®*  
p:202 681-1850/f:202 517-9175

On Wed, Jan 14, 2015 at 11:10 AM, Friedman, Dennis G. <DFriedman@mayerbrown.com> wrote:  
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In order to narrow the parties' differences, AT&T Florida is modifying its proposed language for two sections of the GT&C.

The affected contract provisions are GT&C section 2.74, which is the subject of Issue 12, and GT&C section 12.2, which is the subject of Issue 24.

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**12.2** Failure to pay *undisputed* charges shall be grounds for disconnection of Interconnection Services furnished under this Agreement. If a Party fails to pay any *undisputed* charges billed to it under this Agreement, including but not limited to any Late Payment Charges or Unpaid Charges, and any portion of such *undisputed* Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party will send a Discontinuance Notice to such Non-Paying Party. The Non-Paying Party must remit all *undisputed* Unpaid Charges to the Billing Party within fifteen (15) calendar days *thirty (30) calendar days* of the Discontinuance Notice.

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To simplify and clarify matters, AT&T Florida is withdrawing its proposed section 2.74 and moving the definition of "Discontinuance Notice" into 12.2 and modifying its proposed section 12.2 to read as follows:

12.2 For purposes of this section 12.2, to "pay" a bill means to pay all undisputed charges to the Billing Party and to pay all Disputed Amounts either to the Billing Party or into an escrow account in accordance with Sections 11.9 and 11.10. If the Billed Party fails to pay any portion of a bill, including but not limited to any Late Payment Charges, by the Bill Due Date, the Billing Party may send a written Notice ("Discontinuance Notice") informing such Non-Paying Party that in order to avoid disruption or disconnection of the Interconnection Services furnished under this Agreement, the Non-Paying Party must pay all unpaid amounts as provided above within fifteen (15) calendar days. If the Non-Paying Party fails to pay the bill in full as described herein within fifteen (15) calendar days of the Discontinuance Notice, the Billing Party may discontinue or disconnect Interconnection Services furnished under this Agreement.

Taking into account CA's positions as we understand them, we believe the provision as disputed would read as follows, using the same font conventions as above.

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**In light of the foregoing, Issue 12 is resolved in its entirety (both 12(i) and 12(ii)).**

Issue 24 remains (both 24(i) and 24(ii)).

Finally, Kris, I’d be glad to discuss this with you if you wish.

Dennis

---

**From:** Friedman, Dennis G. [<mailto:DFriedman@mayerbrown.com>]  
**Sent:** Tuesday, January 27, 2015 12:07 PM  
**To:** Kristopher Twomey  
**Cc:** HATCH, TRACY W (Legal)  
**Subject:** CA/AT&T Florida

Kris:

1. Further on the subject of the string below, do you want to set up a time to talk this week?
2. Any response to my note of yesterday proposing resolutions of Issues 39 a and 39b?
3. Issue 17(i) is now resolved. The disputed language, in GT&C section 7.1.1, was:

... For any proposed assignment or transfer CLEC shall provide AT&T-21STATE with a minimum **of one hundred twenty (120) sixty (60)** calendar days' advance written Notice of any assignment associated with a CLEC Company Code (ACNA/CIC/OCN) change or transfer of ownership of assets and request AT&T-21STATE's written consent. ...

AT&T Florida accepts CA's proposed sixty(60) days' notice period.

Dennis



**From:** Kristopher Twomey <kris@lokt.net>  
**Sent:** Tuesday, January 27, 2015 3:37 PM  
**To:** Friedman, Dennis G.  
**Cc:** HATCH, TRACY W (Legal)  
**Subject:** Re: CA/AT&T Florida

I have asked Mike for his input and will get back to you asap.

Kris

**Law Office of Kristopher E. Twomey, P.C.**  
*Counsel to the Competition®*  
p:202 681-1850/f:202 517-9175

On Tue, Jan 27, 2015 at 9:06 AM, Friedman, Dennis G. <[DFriedman@mayerbrown.com](mailto:DFriedman@mayerbrown.com)> wrote:

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**From:** Kristopher Twomey [mailto:[kris@lokt.net](mailto:kris@lokt.net)]  
**Sent:** Thursday, January 22, 2015 8:07 PM  
**To:** Friedman, Dennis G.  
**Cc:** HATCH, TRACY W (Legal)  
**Subject:** Re: CA/AT&T Florida -- Issues 12(i) and 24(i)

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**Law Office of Kristopher E. Twomey, P.C.**  
*Counsel to the Competition®*

[p:202 681-1850](tel:2026811850)/[f:202 517-9175](tel:2025179175)

On Wed, Jan 14, 2015 at 11:10 AM, Friedman, Dennis G. <[DFriedman@mayerbrown.com](mailto:DFriedman@mayerbrown.com)> wrote:

Kris –

**In order to narrow the parties' differences, AT&T Florida is modifying its proposed language for two sections of the GT&C.**

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**In light of the foregoing, Issue 12 is resolved in its entirety (both 12(i) and 12(ii)).**

Issue 24 remains (both 24(i) and 24(ii)).

Finally, Kris, I'd be glad to discuss this with you if you wish.

Dennis

---

This email and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. If you are not the named addressee you should not disseminate, distribute or copy this e-mail.

**From:** Friedman, Dennis G. <DFriedman@mayerbrown.com>  
**Sent:** Friday, February 06, 2015 9:51 AM  
**To:** 'Kristopher Twomey'  
**Cc:** HATCH, TRACY W (Legal)  
**Subject:** CA/AT&T Florida

Kris -

We're awaiting CA's response on these open items:

- Issues 39a and 39b (see my emails of 1/26 and 2/3)
- disputed language for Issues 24(i) and 24(ii) (see my emails of 1/14 and 1/23)

Please let me know where we stand.

As a bonus special incentive, AT&T Florida is going to resolve another issue by acquiescing in CA's position on the disputed language. I will let you know about that after we deal with the items above.

Dennis

**From:** Friedman, Dennis G. [<mailto:DFriedman@mayerbrown.com>]  
**Sent:** Wednesday, February 11, 2015 9:09 AM  
**To:** 'Kristopher Twomey'  
**Cc:** HATCH, TRACY W (Legal)  
**Subject:** RE: CA/AT&T Florida - Issues 39a and 39b

There's another open item that you and I have communicated about; it's the subject of the attached email string.

As a reminder, that item does not involve a proposal to resolve an issue. As explained in the email, Issue 12 is now resolved (by AT&T's withdrawal of GT&C 2.74), and the contract language that is the subject of Issue 24 has changed.

The only question is whether we have accurately portrayed (near the bottom of the email string) CA's position with respect to AT&T's modified language for GT&C 12.2, which I'm reasonably confident we have.

64. Issue 12: The Ray Testimony states (at p. 14, lines 19-20) that “CA believes combining the issues [Issues 12 and 24] adds confusion rather than any clarification.” Explain in detail how combining the issues adds confusion.

CA Response: The issues should not be combined without the mutual consent of the parties, which was not provided. On January 22<sup>nd</sup>, counsel for CA replied to counsel for AT&T declining the suggestion. It is misleading for AT&T to unilaterally combine the issues after CA refused AT&T’s request to do so. CA attempted many times to negotiate in good faith with AT&T prior to the arbitration proceeding, but instead AT&T refused for months to permit CA to speak to anyone with decision-making authority. As a result many issues are now being arbitrated that may have been avoided but for AT&T’s actions. CA presumes the issues list has already been divided among PSC staffers. As such, combining the two could introduce unnecessary confusion to the docket without much tangible benefit.

**From:** Friedman, Dennis G. <DFriedman@mayerbrown.com>  
**Sent:** Thursday, January 29, 2015 1:58 PM  
**To:** Kristopher Twomey  
**Cc:** HATCH, TRACY W (Legal)  
**Subject:** Issues 28(i) and 28(ii) Resolved

Kris –

Issues 28(i) and 28(ii) relate to GT&C section 13.4.4, which was proposed by AT&T Florida and opposed by CA.

AT&T Florida withdraws its proposed section 13.4.4.

This resolves Issues 28(i) and 28(ii).

Dennis



110. Issue 61: Identify any billing detail not available to CA pursuant to AT&T Florida's CLEC Billing Guide (available on AT&T's CLEC Online website) that CA asserts is required to comply with 47 C.F.R. §§ 64.2400 and 2401.

CA Response: CA has made no representations regarding AT&T's billing guide and has not reviewed such guide.