Counsel to the Competition®

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Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

June 5, 2015

Re: Docket No.: 140156-TP: Post-hearing Brief

Dear Ms. Stauffer:

Please find the attached Post-hearing Brief filed on behalf of Communications Authority, Inc. and file in the above referenced docket. Electronic copies have been served to the Parties shown on the attached Certificate of Service.

Respectfully submitted,

/s/
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cc: All Parties of Record

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CERTIFICATE OF SERVICE
Docket No. 140156-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail this 5th day of June, 2015, to the following:

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/s/
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

COMMUNICATIONS AUTHORITY, INC.'S POST-HEARING BRIEF

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

47 CFR §51.319

47 CFR §51.321

47 CFR §51.323

47 CFR §64.2400

Florida PSC Rule 25-22.0365(5)(d)

Regulatory Orders

Implementation of the Local Competition Provision in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 629 (1996).

Expanded Interconnection with Local Telephone Company Facilities, CC 91-141 (July 25, 1994)

Triennial Review Remand Order on Remand, WC Docket 04-313 (Adopted December 15, 2004).

Connect America Fund et al.; WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011)

Testimony

Direct and Rebuttal Testimony of Susan Kemp

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BellSouth Brief of the Evidence, In re: Petition of Competitive Carriers for Commission Action to Support Local Competition In BellSouth's Service Territory, Docket No. 981834-TP, and In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for

Generic Investigation into Terms and Conditions of Physical Collocation, Docket 990321-TP (April 1, 2004).

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INTRODUCTION AND SUMMARY

AT&T forced CA to bring this interconnection agreement ("ICA") "negotiation" to the Florida Public Service Commission ("Commission") for a final conclusion. Allegedly because Communications Authority, Inc. ("CA") refused to sign a non-disclosure agreement, AT&T refused to fully cooperate in the ICA negotiations in violation of the §251(c) of the Telecommunications Act of 1996 ("the Telecom Act").[1] The Federal Communications Commission ("FCC") recognized the disparity in bargaining power in its initial consideration of rules on local competition:[2]

> 141. We conclude that establishing some national standards regarding the duty to negotiate in good faith could help to reduce areas of dispute and expedite fair and successful negotiations, and thereby realize Congress's goal of enabling swift market entry by new competitors. In order to address the balance of the incentives between the bargaining parties, however, we believe that we should set forth some minimum requirements of good faith negotiation that will guide parties and state commissions. As discussed above, the requirements in section 251 obligate incumbent LECs to provide interconnection to competitors that seek to reduce the incumbent's subscribership and weaken the incumbent's dominant position in the market. Generally, the new entrant has little to offer the incumbent. Thus, an incumbent LEC is likely to have scant, if any, economic incentive to reach agreement. (footnotes omitted)

CA was faced with just what the FCC noted—no incentive for AT&T to cooperate. The FCC listed several types of behavior that would qualify as bad faith:

> Even where there is no specific duty to negotiate in good faith, certain principles or standards of conduct have been held to apply. For example, parties may not use duress or misrepresentation in negotiations. Thus, the duty to negotiate in good faith, at a minimum, prevents parties from intentionally misleading or coercing parties into reaching an agreement they would not otherwise have made. We conclude that intentionally

[1] Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).
[2] Implementation of the Local Competition Provision in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 629 (1996). See, https://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1996/fcc96325.pdf (Hereinafter "Local Competition Order")

> obstructing negotiations also would constitute a failure to negotiate in good faith, because it reflects a party's unwillingness to reach agreement. In particular, we believe that designating a representative authorized to make binding representations on behalf of a party will assist small entities and small incumbent LECs by centralizing communications and thereby facilitating the negotiation process. [3] (footnotes omitted)

AT&T has argued that its reluctance to negotiate was due to CA's refusal to sign AT&T's proposed non-disclosure agreement ("NDA"). The FCC cautioned against this: "We conclude that there can be nondisclosure agreements that would not constitute a violation of the good faith negotiation duty, but we caution that overly broad, restrictive, or coercive nondisclosure requirements may well have anticompetitive effects."[4] CA could not accept the terms of the NDA, and in retaliation, AT&T refused to properly negotiate, particularly regarding rates (both those based on the FCC's total elemental long range incremental cost formula ("TELRIC") and market-based rates).

AT&T failed to provide subject matter experts or employees with decision-making authority on negotiation conference calls. This also directly contradicts the Local Competition Order's restrictions: "If a party refuses throughout the negotiation process to designate a representative with authority to make binding representations on behalf of the party, and thereby significantly delays resolution of issues, such action would constitute failure to negotiate in good faith."[5] This happened repeatedly and unnecessarily delayed the negotiation process.

At the conclusion of the negotiation window, AT&T offered additional time to negotiate to which CA agreed, but AT&T then failed to proceed with any tangible efforts

[3] Local Competition Order at par. 148.
[4] *Id.* at par. 151.
[5] *Id.* at par. 154, (footnotes omitted).

during that time period. At the end, AT&T refused to cooperate with filing a joint arbitration request and insisted that CA file alone. AT&T also refused to cooperate with developing a decision point list prior to filing.

This background is necessary to appreciate AT&T's true intent in this docket. AT&T's original proposed standard interconnection agreement ("ICA") represents an attempt to roll-back every gain made by competitive local exchange carriers through ICA arbitrations over the past fifteen years. It is breathtaking in scope and even seeks to overturn the most basic tenets of the Telecom Act and the FCC's Local Competition Order.[6] Moreover, throughout its proposed ICA, AT&T seeks mechanisms where it is always in control of everything, never takes any risk, never has any costs, is never inconvenienced in any way, and never suffers any consequences for anything it does to a CLEC. This is not parity.

The goals of the Telecom Act and the FCC's 1996 Local Competition Order should be the starting point for the Commission's legal considerations in this case, not AT&T's one-sided boilerplate that no other CLEC has dared challenge in nearly a decade. AT&T has claimed that CA's issues are a "wish list," but the situation is quite the opposite. Through bullying tactics and evidencing the heart of an ILEC monopolist, AT&T is seeking to impose its will on CA and other future CLECs. CA, however, is simply seeking a negotiated ICA with reasonable terms, many of which already exist in older ICAs that are in evergreen status.

CA was uniquely positioned to bring this arbitration and prosecute it to its necessary conclusions. In the current CLEC business climate, established CLECs hold on

[6] *Id.*

to the hard-earned ICAs that AT&T allows to perpetually renew (allow to enter into "evergreen status"). Meanwhile, new CLECs cannot adopt those and are faced with the intimidating prospect of negotiating with AT&T. Most new CLEC entrants lack the knowledge and experience to understand just how dangerous the terms and conditions in AT&T's standard ICA are and the unnecessary costs and risks it imposes. CA's President Mike Ray has been involved in running CLECs and designing networks almost since the inception of the industry. His experience makes him uniquely qualified to understand the dangers lurking in the several hundred page document and to recognize inconsistencies with previous and standard industry practice. His knowledge and experience is so solid that AT&T chose not to even cross-examine him at the evidentiary hearing. That was a wise decision by counsel for AT&T—nothing good would have come out of that for AT&T, in fact, it would only have been more damaging to their precarious positions.

In many ICA arbitrations, evidentiary hearings are unnecessary. Parties' positions are clear and the ultimate decision is based on an application of law to stipulated facts. This is not the situation the Commission was presented with in this arbitration. AT&T's refusal to cooperate with CA's discovery attempts forced the need for a hearing and much information was obtained during the hearing. In this brief, CA will apply the facts gleaned from that hearing and from other testimony to the actual applicable law, proving that AT&T's positions are simply wrong, anti-competitive, and in several cases unlawful.

Not only in Florida, but nationwide, everybody complains that there is insufficient competition for broadband services. Regulators and media alike note the presence of an ILEC/cable duopoly that results in high prices and poor service. They fail to ask follow-up questions. Why is that the case? What happened to the vaunted goals of the Telecom

Act? What can be done to address this problem? Accepting CA's recommended ICA language is one small step the Commission can take to assist new CLEC entrants such as CA in levelling the playing field so that they have a chance to compete. This newly arbitrated ICA will be available for other CLECs to adopt in Florida and, if CA prevails on its key issues, allow them to operate free of AT&T's attempted unfair restraints. Public policy dictates the Commission to carefully consider CA's arguments and ultimately approve its proposed ICA language.

ISSUES AND POSITIONS

ISSUE 1: Is AT&T Florida obligated to provide UNEs for the provision of Information Services?

CA's Position on the Issue

Yes. AT&T permits its own CLEC affiliate to use UNE facilities to provide non-telecommunications services. Therefore, AT&T must permit CA to do the same in a non-discriminatory manner.

Discussion

CA has argued that it seeks a level playing field when competing with AT&T Florida for Internet service. CA has also shown that AT&T claims that its Internet services are not "telecommunications services" so that it does not have to charge or remit federal Universal Service Fund surcharges on those services. In Susan Kemp's ("Kemp") deposition when asked "Does AT&T Florida pay USF taxes on those services?," Kemp answered, "I don't know." [7] AT&T has neither refuted CA's testimony nor provided evidence that CA's statement is not true. AT&T's refusal to permit CA to purchase UNEs for information services would force CA to classify its internet service as Telecommunications Services which would make those services USF-assessable while AT&T's competing services are not assessed USF. This would be clearly unfair to CA and would harm competition by giving AT&T an unfair competitive advantage.

As suggested in the Rebuttal Testimony of Mike Ray,[8] CA believes that the Commission should approve language which simply states that UNEs shall be available

[7] Direct Testimony of Susan Kemp, at page 10, line 8. (Hereinafter "Kemp Direct")
[8] Rebuttal Testimony of Mike Ray at page 2, line 2. (Hereinafter "Ray Rebuttal")

to CA pursuant to FCC rules. This would make clear that AT&T may not apply more restrictive criteria than permitted, and would provide AT&T with language that restricts CA from any use of UNEs not permitted by FCC rules. CA's proposal would also avoid this Commission having to engage in legal hair-splitting, deferring entirely to the FCC rules without taking a position on CA's ability to provide information services without classing them as telecommunications services. CA has made this suggestion to AT&T, but AT&T has failed to respond to CA on this proposed compromise.

ISSUE 2: Is Communications Authority entitled to become a Tier 1 Authorized Installation Supplier (AIS) to perform work outside its collocation space?

CA's Position on the Issue

Yes. AT&T requires CA to be an AIS to construct CLEC collocations. CA should be entitled to become certified as an AIS for collocation construction, or AT&T should be required to provide the construction elements to CA at TELRIC prices if CA is denied the right to be an AIS.

Discussion

In many areas, AT&T has approved a very limited number of Authorized Installation Suppliers ("AIS") contractors, and has refused to permit, in its sole discretion, any new entrants to become certified as an AIS. The predominant AIS contractors are affiliated with AT&T, in that they maintain offices inside AT&T Central Offices and perform work for AT&T on a routine basis. In those cases, the cost of using an AIS is often prohibitive for a CLEC, who may itself possess the same technical skills and abilities as the AIS. This is especially true when the CLEC only needs minor work such as a short optical cable run within the central office and the AIS imposes a minimum job cost upon the CLEC which is orders of magnitude greater than the actual value of the work required. This creates an artificial barrier to entry for CLECs, imposed by AT&T.

CA argues that AT&T Florida uses this AIS scheme to artificially raise CLEC costs and deny efficiency, cost control and choice of vendor when constructing a new collocation or augmenting an existing one.[9] CA argues that AT&T Florida improperly refuses to permit qualified applicants, including CLECs, to become AIS vendors in order

[9] Direct Testimony of Mike Ray, p. 4 at line 7. (Hereinafter, "Ray Direct")

to prevent CLECs from performing their own installations and to limit the number of AIS vendors available to CLECs for such installations.

Kemp was asked in her Staff deposition,[10] "When was the last time AT&T Florida certified a vendor for Tier 1 status?" She answered, "I don't know." Ray's testimony argued, "I do know that there is often only one vendor that will even provide a quote for smaller work to be completed and there are high per-job minimums even for simple work. CA could do the work for far less money."[11] AT&T has offered no evidence rebutting CA's claim.

CA has also argued that one AIS vendor, Mastec, receives benefits from AT&T such as the ability to maintain offices and staff inside some AT&T central offices and in some cases is the only vendor willing to perform certain installations for CLECs at substantially higher than market prices for the work. AT&T has also not refuted this claim. In Kemp's deposition, she was asked, "Do you know if there's a list that keeps track of the vendors by central office?"[12] She replied, "I know we have a list of the vendors. I'm assuming that we could research and find out exactly where their work activities occurred. I don't have that at my fingertips."[13] Kemp was then asked to provide that list as Exhibit 1 to the deposition, but the exhibit was never provided.

Under cross-examination at hearing, Kemp later stated that AT&T did not have the records after all.[14] Kemp was asked during her deposition, "Does AT&T Florida keep track of how many AIS vendors currently have Tier 1 employees in Florida?" and she

[10] Deposition of Susan Kemp, at p. 11, line 21 (hereinafter "Kemp Deposition").
[11] Ray Rebuttal at p. 4, line 21.
[12] Kemp Deposition
[13] Kemp Deposition
[14] Kemp Deposition

replied "No, not to my knowledge."[15] Staff then asked "Is there any way that you could give us the price of the jobs they are performing?" to which she responded "No, ma'am."[16]

Despite this, AT&T's inability to disclose the rates didn't stop Kemp from testifying in her rebuttal testimony, "First, since AT&T Florida does not control the rates charged by the AIS, which are not TELRIC-based, the rates that AT&T Florida would pay the AIS would in all likelihood exceed the TELRIC-based rates that AT&T Florida could charge CA. As a result, AT&T Florida would sustain financial loss every time CA obtained services."[17] AT&T had the opportunity to illustrate this by producing evidence of its costs compared to what its AIS charges CLECs for cable installation, but Kemp refused to do so. It seems very unlikely that this statement is true, given the volume of work done by AIS vendors for AT&T.

Thus, AT&T has not provided evidence to refute CA's testimony that it prohibits new AIS vendors from becoming certified, while AT&T admits that it does not keep records of how many AIS vendors actually offer services to CLECs in each central office. AT&T also refuses to disclose the prices that it pays to is AIS vendors for work performed by the AIS for AT&T, while CA argues that CLEC are overcharged for the same work from that AIS.

Federal regulations and FCC orders also support CA's position. 47 CFR §51.323(j) states "An incumbent LEC shall permit a collocating telecommunications carrier to subcontract the construction of physical collocation arrangements with

[15] Kemp Deposition at page 15, line 2.
[16] Kemp Deposition at page 18, line 20.
[17] Kemp Rebuttal at page 4, line 18.

contractors approved by the incumbent LEC, provided however that the incumbent LEC shall not unreasonably withhold approval of contractors." In AT&T's response to Staff's first set of interrogatories, when asked "3. Is AT&T Florida currently accepting applications for AIS in Florida?," Kemp responded "AT&T Florida is not currently accepting applications for Tier 1 vendor status." Thus, AT&T has admitted that it is not accepting any applications for Tier 1 AIS contractors, which clearly violates this provision.

47 CFR §51.511(g) on Collocation states, "Collocation costs shall be recovered consistent with the rate structure policies established in the Expanded Interconnection proceeding, CC Docket No. 91-141." The FCC's Memorandum Opinion and Order in that proceeding dated July 25, 1994 states:

> 73. Orders/Background. In earlier orders in this proceeding, we held that the cross-connect element, should be tariffed at a study-area-wide averaged rate under both virtual collocation and physical collocation… We concluded that cost differences among central offices may justify different charges for central office space, power, environmental conditioning, and labor and materials charges for installing physical collocation arrangements, but charges should be uniform for all interconnectors in each individual central office. We now conclude, for the reasons given in our prior orders, that the same tariffing requirements should apply to physical collocation provided pursuant to exemption from the virtual collocation requirement.[18]

As CA has pointed out, AT&T's entire AIS requirement is discriminatory to CA and other CLECs in that AT&T receives preferential treatment and pricing from its AIS partners (the details of which AT&T has repeatedly refused to disclose in this proceeding), and in exchange those AIS partners get a virtual monopoly on CLEC central office installations with no price controls. CLECs end up paying substantially more than

[18] Expanded Interconnection with Local Telephone Company Facilities, CC 91-141 (1994).

market value for the work the AIS performs, because AT&T's policies prevent the CLEC from choosing its own vendor.

AT&T's use of an AIS for collocation work also works as an end run around of the FCC's requirement that collocation rates be based on TELRIC. From the very beginning, the FCC required collocation to be provided to CLECs at TELRIC rates.[19] BellSouth acknowledged this simple premise in the last collocation proceeding at the Commission arguing in its brief:[20]

> Issue 9B: For those collocation elements for which rates should be set, what is the proper rate and the appropriate application of those rates?
>
> **BellSouth's Position: Rates should be based upon a forward looking cost study that adheres to the Total Element Long Run Incremental Cost (TELRIC) pricing rules and utilizes the cost study methodology previously approved by this Commission. Each of the rates proposed by BellSouth complies with these standards, and each should be approved.

By simply subcontracting away the work, AT&T seeks to avoid its obligation to provide collocation at TELRIC rates. The Commission should not accept this ploy.

In the FCC's Local Competition Order, the FCC made its first call to action for state commissions dealing with collocation issues: [21]

> 558. We conclude that we should adopt explicit national rules to implement the collocation requirements of the 1996 Act. We find that specific rules defining minimum requirements for nondiscriminatory collocation arrangements will remove barriers to entry by potential competitors and speed the development of competition. Our experience in the Expanded Interconnection proceeding indicates that incumbent LECs

[19] Commission Adopts Rules to Implement Local Competition Provisions of Telecommunications Act of 1996, CC Docket NO. 96-98 (August 1, 1996), *see* https://transition.fcc.gov/Bureaus/Common_Carrier/News_Releases/1996/nrcc6052.txt

[20] BellSouth Brief of the Evidence, In re: Petition of Competitive Carriers for Commission Action to Support Local Competition In BellSouth's Service Territory, Docket No. 981834-TP, and In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for Generic Investigation into Terms and Conditions of Physical Collocation, Docket 990321-TP (April 1, 2004).

[21] Local Competition Order.

> have an economic incentive to interpret regulatory ambiguities to delay entry by new competitors. We and the states should therefore adopt, to the extent possible, specific and detailed collocation rules. We find, however, that states should have flexibility to apply additional collocation requirements that are otherwise consistent with the 1996 Act and our implementing regulations…
>
> 569. Finally, our experience reviewing the tariffs that incumbent LECs filed to implement our requirements for physical and virtual collocation suggests that rates, terms, and conditions under which incumbent LECs propose to provide these arrangements pursuant to section 251(c)(6) bear close scrutiny. We strongly urge state commissions to be vigilant in their review of such arrangements. We will review this issue and revise our requirements as necessary. (footnotes omitted)

The time has come for the Commission to reject AT&T's manipulation of these ICA terms. CA believes that the Commission should order AT&T to change its practice, and to tariff the collocation cross-connect elements consistent with the requirements cited on a non-discriminatory, cost-based basis. CA believes this is in the best interest of AT&T because AT&T cited only safety concerns in its rebuttal on this issue, and this solution permits AT&T to strictly control who has access to its cherished Central Offices. This solution also benefits CLECs who may later adopt this ICA, because many will likely not have the resources to become an AIS even if permitted to do so. In the alternative, CA believes that the Commission should approve CA's proposed language which is consistent with the requirement cited above that AT&T may not unreasonably withhold approval of a CLEC's choice of AIS (which would include the CLEC itself or its subsidiaries). In light of these facts and the applicable federal law and implementing regulations, it is clear that CA's claim is true and that CA is entitled to the language and relief requested.

ISSUE 3: When Communications Authority supplies a written list for subsequent placement of equipment, should an application fee be assessed?

CA's Position on the Issue

No. CA believes AT&T should not be entitled to charge application fees, review fees, or any other fees, when CA simply submits updated equipment records to AT&T when changing CA's own equipment.

Discussion

At hearing, Kemp testified in her opening statement:[22]

> "Contrary to Communications Authority's comments, nothing in the process is done with the intention to inflate prices or to make it difficult for CLECs. AT&T Florida must provide collocation to CA at TELRIC-based rates according to the Act, and it does exactly that using the rates that were approved by the Florida Commission."

However, Kemp was later asked the following series of questions at hearing:[23]

> Q: Is it AT&T's position that it costs the same amount to process a collocation application as it does to review a list of equipment that a CLEC adds to or changes in its existing collocation?
> A: Adding equipment or changing equipment would require an augment application. And it would take some time to review that, and that would result in expense to AT&T.
> Q: So even if it's just reviewing a piece of equipment, is it, is it true that the augment fee is 2236.00?
> A: It's the price in the pricing schedule. That sounds about right.
> Q: Are there any other fees applied to it or is it just the application fee? Is there any other administrative fees or anything like that on top of the augment fee?
> A: I believe it's just the augment fee. If Communications Authority was going to exchange an identical piece of equipment with the same model, it wouldn't require an application.
> Q: Ok. Can you tell me what the administrative only application fee is in Florida? The rate is 760.91.
> A: No, sir.

[22] Hearing Transcript, page 000634 at line 14.
[23] Hearing Transcript, page 000644 at line 3.

> Q: You're not aware of what that fee is?
> A: I'm not familiar with it.
> Q: So if the rate is 2236.00, and it's just a review of a piece of equipment, what is AT&T actually doing with that as opposed to, you know, the work it takes to actually increase power or something that's typically done in an augment—for an augment when it's –how many people are looking at this thing?
> A: Well, AT&T would review the list of proposed equipment to make sure that it was necessary for collocation and to make sure that the equipment is safe to place in a central office. That equipment might not necessarily be listed on one of the lists as a piece of equipment that is normally used or used often in a central office, so it might require quite a bit of review.
> Q: Does AT&T charge the fee even if the equipment is already on the list or only the check to see if it's on the list?
> A: Yes. There's a fee for any equipment that's changed or added.
> Q: Even if it's already on the approved list and—
> A: Yes.
> Q: Ok. What are they, what are they actually doing to warrant that cost-based fee? It it's already on the list, it still costs 2236.00?
> A: Well, the application is then applied to the records, and CA's records would be updated to reflect any equipment that is placed in the, in the collocation arrangement.
> Q: Ok, so just updating the records warrants a 2236.00 fee?
> A: It is labor intensive, and we want to make sure that safety is maintained in the central offices.
> Q: Even if it's already NEBS compliant such that—meaning that if there was a fire in the, in the—actually caused by the unit, the fire must stay within the chassis. So that's NEBS compliance. So even if it's NEBS compliant, it still takes that much money to make sure that it's going to be safe?
> A: Well, NEBS is not the only list that's considered. There's another list called the AEL list that equipment can appear on. And a collocator can request equipment that's not on any list, and that would be considered also for placement in a collocation arrangement.
> Q: In that case shouldn't there be a slightly different fee that's a little bit—that reflects less cost, less time?
> A: No, sir.

In that exchange, Kemp confirmed CA's contention—AT&T's position is that an augment application and fee are required for CA to replace its own equipment, that augment fee is 2236.00, and that it should be cost-based. However, she was unable to cite anything close to 2236.00 worth of work that AT&T is doing for that fee.

Even though the much-lower administrative only application fee appears in AT&T's proposed pricing for CA's ICA, Kemp said she doesn't know what it is for. She also confirmed that *even if the equipment is already on AT&T's All Equipment List ("AEL")*, it still charges the same "augment fee" for "review." Asked what AT&T does for this fee of $2236.00, Kemp said that AT&T's records would be updated. That's it for a supposedly cost-based fee. Asked if the fee shouldn't be less of the equipment is already on AT&T's AEL because it would clearly take less work for AT&T to review, Kemp said no.

CA believes that Kemp's testimony makes clear that AT&T's entire requirement of an augment application and associated application fee revolve around AT&T's collection of non-cost-based fees which are unlawful because they are not TELRIC-based for the work being done. Applications fees, which may have been justified as TELRIC-based at one time for a complete augment, are also being charged when a CLEC simply replaces one piece of gear with another. The augment fee is not TELRIC-based when it is applied in this fashion, which is why CA argues that it is unlawful and should not apply.

AT&T seemed to try to negate this disparity in Kemp's testimony at hearing:[24]

> "Q: All of the application fees that Mr. Twomey referred to, are those fees—or have those fees been approved by the Commission based upon AT&T's costs in a cost proceeding?
> A: Yes, they have."

[24] Hearing Transcript, page 000702 at line 10.

This is misleading, in that AT&T is applying augment fees to things that really are not augments at all. The cost to actually augment power and cross-connects in a collocation is clearly not the same as the cost to review a CLEC equipment list.

If any doubt remains, Kemp's further testimony makes this perfectly clear:[25]

> Q: Are you aware of any regulatory or legislative authority granting AT&T the right to charge for a safety review of NEBS-certified equipment?
> A: No, I'm not.
> Q: But doesn't the application and augment fee apply even if it's on the AEL?
> A: Yes, it does.
> Q: It's not easy enough to just look and say, ok, well this is ok, we don't need to charge a bunch of money for it?
> A: No, sir. That's not the only review that it goes through.

[25] Hearing Transcript, page 000655 at line 4.

ISSUE 4a: If Communications Authority is in default, should AT&T Florida be allowed to reclaim collocation space prior to conclusion of a dispute regarding the default?

ISSUE 4b: Should AT&T Florida be allowed to refuse Communications Authority's applications for additional collocation space or service or to complete pending orders after AT&T Florida has notified Communications Authority it is in default of its obligations as Collocator but prior to conclusion of a dispute regarding the default?

CA's Position on the Issue

No. AT&T's language allows AT&T to unilaterally act against CA, potentially threatening CA's existence, without first providing an opportunity for CA to contest the assertion that it is in default. The Commission's recently approved accelerated dispute resolution process would be available to either party for resolution of time-sensitive issues.

Discussion

As is the case in many instances in the Draft Agreement, CA argues AT&T should be required to use the ICA's Dispute Resolution process to resolve all disputes, while AT&T argues that it should have other unilateral self-help remedies available to it, while denying CA any such remedies. In Kemp's deposition, she was asked. "What would be the consequences of using the dispute resolution process?" In response, Kemp said, "Well, in our view, it would take a very long time. And with safety at stake, we worry about the safety of employees for AT&T and all their CLECs and the equipment

for which AT&T and any other collocator in that area, so it's a timing issue."[26] Kemp was then asked, "That timing concern would apply to safety issues?" She responded "Yes." Then Kemp was asked "Are there any other categories where timing would be a concern?" Kemp responded "There might be, but safety really is our focus when it comes to collocation."[27]

It seems clear that AT&T uses vague assertions about safety as its justification to avoid even the most basic parity between the parties. Its true intentions are made clear by Kemp's last statement, where she states that safety is not the only situation in which AT&T might seek to skip the Dispute Resolution process and put the CLEC out of business by removing its collocated equipment.

It is also worthy of note that CA has proposed that the Dispute Resolution process specifically permit either party to seek resolution using the Commission's expedited dispute resolution process, which would by design result in a swift decision for both parties. AT&T has strongly opposed CA's attempt, preferring to deny the parties access to this process. Thus, AT&T's assertion that the Dispute Resolution process takes too long to be viable at AT&T's option is obviously disingenuous. The Dispute Resolution process would only be lengthy and prolonged at AT&T's insistence, which should not be a basis for permitting AT&T to skip the process whenever it so chooses.

In his rebuttal testimony, Ray testified at length about his experience with how careful AT&T is with critical CLEC service when AT&T believes that the CLEC has

[26] Kemp Deposition
[27] Kemp Deposition

breached its agreement.[28] The incident Ray described clearly shows why AT&T should not be permitted to unilaterally take potentially fatal action against CA while the Dispute Resolution process is ongoing. Moreover, 47 CFR §51.323(c) states,

> Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment is not necessary for interconnection or access to unbundled network elements under the standards set forth in paragraph (b) of this section. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the incumbent LEC applies to its own equipment. An incumbent LEC may not object to the collocation of equipment on the ground that the equipment fails to comply with Network Equipment and Building Specifications performance standards. An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days of the denial a list of all equipment that the incumbent LEC locates at the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. This affidavit must set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; the incumbent LEC's basis for concluding that the requesting carrier's equipment does not meet this safety requirement; and the incumbent LEC's basis for concluding why collocation of equipment not meeting this safety requirement would compromise network safety.

AT&T's language conflicts entirely with this rule, permitting AT&T to unilaterally demand removal of CA's equipment in violation of this rule without even affording CA the ability to operate while seeking Dispute Resolution under this ICA. Additionally, AT&T's language could be used to prevent CA from resolving an outage for its subscribers if it needed to replace a piece of equipment and the replacement was a

[28] Ray Rebuttal, page 6 at line 12.

newer model than the failed gear. At hearing, Kemp acknowledged this, testifying as follows:[29]

> Q: With AT&T's proposed language in the ICA, isn't it the case that if there were CA bills pending, pending dispute resolution that were submitted, that this language would prevent Communications Authority from filing an augment to its collo(cation) to change equipment or add more power or anything like that?
> A: Yes.
> Q: So isn't it the case that this language would also prevent CA from replacing its gear in the case of a failure?
> A: Yes, it could.

Kemp's admission clearly addresses CA's concerns and provides evidence that its concerns are valid. CA's language should be adopted to prevent this unreasonable result.

[29] Hearing Transcript, page 000648 at line 10.

ISSUE 5: Should Communications Authority be required to provide AT&T Florida with a certificate of insurance prior to starting work in Communications Authority's collocation space on AT&T Florida's premises?

CA's Position on the Issue

AT&T's language requiring insurance to be obtained within five days is not feasible. CA cannot obtain insurance within five days; it takes much longer to obtain this coverage in Florida and most insurance carriers have refused to write such coverage for CLECs.

Discussion

CA has added language to the Draft ICA to clarify that AT&T may not obtain insurance and bill CA for that insurance if CA has not commenced the work for which the insurance is required to cover. This is logical because AT&T has no risk as long as the subject work has not commenced and prevents AT&T from creating arbitrary costs that it then seeks to impose on CA while CA is working to meet the insurance requirements in good faith prior to commencement. Moreover, AT&T's internal policies are sufficient in that insurance must be provided as part of the application process for collocation or structure access.

In her direct testimony, Kemp testified, "If CA breaches this obligation, it would be perfectly reasonable to require CA to stop work until it obtains insurance and provides the required certificate."[30] Ms. Kemp went on to argue that, "CA will not have to obtain insurance within 5 days if it abides by the agreement. All it needs to do is obtain the

[30] Kemp Direct, page 12 at line 19.

insurance before it begins collocation work, as the contract requires."[31] Then again, "The scenario being addressed in 4.6.2 only arises if CA has begun work in the collocation space and has not obtained the required insurance certificate. AT&T Florida can only send out a deficiency notice if there is a deficiency, and there can be no deficiency unless work has commenced without the required insurance certificate having been provided."[32] Finally at hearing, Kemp testified: [33]

> Q: Wouldn't it be sufficient for Communications Authority simply not to do the work that was no longer covered by the insurance while it was attempting to get a new policy or renew an existing policy that had expired?
> A: Yes. If they stopped work awaiting the certificate, that would be okay.

There would be no disagreement if only AT&T's language actually said what is stated here. CA has repeatedly stated that it does not propose to be entitled to perform any work inside a collocation at any time while its insurance is not in effect. Whether it has not yet obtained the required insurance or the policy has lapsed, CA has already agreed that it will do no work until there is insurance coverage in-force for the work being performed. This issue was discussed in negotiations after the filing of the arbitration, but was not resolved.

CA suggests that the Commission approve the following language which seems to be supported by witnesses from both parties:

> 1.1.1 A certificate of insurance stating the types of insurance and policy limits provided the Collocator must be received prior to commencement of any work. If a certificate is not received, **AT&T-21STATE** will notify the Collocator, and the Collocator will have ***thirty (30) days*** to cure the

[31] Kemp Direct, page 13 at line 7.
[32] Kemp Direct, page 14 at line 9.
[33] Hearing Transcript, page 000650 at line 24.

deficiency. ***Collocator shall not perform any work upon AT&T premises at any time while insurance coverage is not in force.*** If the Collocator does not cure the deficiency within ***thirty (30) days***, Collocator hereby authorizes **AT&T-21STATE**, and **AT&T-21STATE** may, but is not required to, obtain insurance on behalf of the Collocator as specified herein. **AT&T-21STATE** will invoice Collocator for the costs incurred to so acquire insurance.

ISSUE 6: Should AT&T Florida be allowed to recover its costs when it erects an internal security partition to protect its equipment and ensure network reliability and such partition is the least costly reasonable security measure?

CA's Position on the Issue

No. AT&T proposes to charge CA for arbitrary construction costs entirely unrelated to CA's collocation in an AT&T central office. CA has added language clarifying that AT&T may only bill CA for security upgrades if those upgrades are in response to CA's proven misconduct.

Discussion

CA believes that this ICA proposal is unlawful, and could be used by AT&T to impose arbitrary, non-cost-based financial obligations upon its competitor to artificially increase CA's operational costs. AT&T has testified that it has never in its history had to erect such a partition despite nearly two decades of dealing with collocated CLECs nationwide. Even though AT&T's proposed language refers to an "internal security partition," in its testimony AT&T cited only heat dissipation and equipment interference concerns which are not security issues and for which AT&T provided no basis or any history of problems. CA believes these admission further prove that there is no reasonable need for this language.

47 CFR §51.323(i)(4) contains considerable restrictions upon the ILEC's ability to impose security protocols and costs upon a CLEC. CA argues that AT&T's language is overbroad and does not comply with this language. Further, CA has stated that it intends to use cageless collocation. 47 CFR §51.323(j)(2) states, "Cageless collocation. Incumbent LECs must allow competitors to collocate without requiring the construction

of a cage or similar structure." In response to Staff's first set of interrogatories, "9. What is a partition?," Kemp responded, "A partition is a physical barrier that separates a CLEC's collocation space from other CLECs' or AT&T Florida space. A partition can range from a wire mesh cage screen to fully framed walls." This directly conflicts with what is allowed by 47 CFR §51.323(i)(4).

CA suggests that the Commission adopt language which simply states that AT&T shall be entitled to erect a security partition consistent with the requirements set forth in 47 CFR §51.323(i)(4). All other AT&T proposed language should be removed.

ISSUE 7a: Under what circumstances may AT&T Florida charge Communications Authority when Communications Authority submits a modification to an application for collocation, and what charges should apply?

CA's Position on the Issue

AT&T's proposed language permits AT&T to repeatedly charge application fees, even if AT&T has rejected the application improperly or if the resubmission of the application does not dramatically increase AT&T's costs. CA believes that the initial application fee is more than adequate to cover those costs.

Discussion

Since collocation is intended to be TELRIC-based, CA believes AT&T's language is inappropriate. CA has added a provision that ensures that if AT&T's costs have not increased, it is not entitled to keep charging additional application fees for resubmitted applications. Even in cases where CA has made a simple error which requires resubmission of an application, AT&T has not shown that its costs for a second cursory review of the same application are not covered by the initial application fee.

In his rebuttal testimony, Ray testified,

> In my experience, the only reason why AT&T demands changes to a collocation application has nothing to do with incorrect CLEC information and everything to do with AT&T's various systems not working correctly or being inadequately documented and not accepting a valid order unless a special tweak is made. In the cases I have seen, these tweaks are not anything the CLEC could have known to do; they are quirks in the AT&T systems. …when Terra Nova collocated in the Miami Grande central office, AT&T provided incorrect circuit assignment ("CFA") information five times over the course of as many months. Terra Nova had to fight for months for billing credits to not have to pay for the collocation which it could not use because of AT&T's sheer incompetence. AT&T did not compensate Terra Nova (and does not propose to compensate CA) for this sort of eventuality. It is not parity for a CLEC to have to pay application

> fees over and over again, unless AT&T has to also pay a fee whenever it fails to live up to its obligations.[34]

AT&T has not refuted Mr. Ray's claims. AT&T did not cross-examine Mr. Ray at the evidentiary hearing. Since AT&T's language clearly does not require AT&T to compensate CA when AT&T makes a mistake related to a collocation application, it is reasonable that CA should not have to pay over and over again when AT&T requires it to resubmit the same application multiple times.

In her direct testimony, Kemp testified, "A revised application requires review as much as an initial application. Accordingly, AT&T Florida is entitled to recover the costs associated with the review of the application and any subsequent modifications."[35] Kemp continues in her direct testimony, "Further, CA's proposal would eliminate one significant incentive to provide accurate complete information on its applications the first time. Absence of any financial incentive to get it right the first time will inevitably encourage lackadaisical behavior for CA and every CLEC that obtains this provision in its ICA."[36]

First, CA points out that there is nothing in the Telecom Act nor in any FCC rules that permits AT&T to charge a substantial "got it wrong" penalty of $2785.00 simply because a CLEC makes a mistake on an application or incorrectly guesses what secret code AT&T wanted in an obscure field on the application. This is very obviously an artificial barrier to entry for CLECs.

[34] Ray Rebuttal Testimony, page 9 at line 17.
[35] Kemp Direct Testimony, page 18 at line 1.
[36] Kemp Direct Testimony, page 19 at line 5.

Second, AT&T proposes no such "got it wrong" penalties for itself if it incorrectly processes an order. In Ray's rebuttal testimony, he recounts an incident where AT&T Florida provided incorrect CFA information for a collocation five different times over a period of five months.[37] In that case, the CLEC suffered harm by not having use of its collocation (and not being able to provide any service from that central office) for nearly half a year, and it cost AT&T nothing. Not only did it cost AT&T nothing, the CLEC had to fight for months to obtain credit for the charges for the collocation which it could not use because of AT&T's actions.[38]

Finally, CA notes again that collocation costs are required to be cost-based. Since AT&T's policy requires CA to contract all of the construction work to an AIS, AT&T is actually doing nothing except the application review and some recordkeeping in exchange for its application fee. It's a stretch to say that these simple tasks are worth $2785.00 for the initial application in a cost-based model, but it is indefensible that it costs AT&T $2785.00 to review the application a second time around because it demanded a simple change.

[37] Ray Rebuttal Testimony, page 10 at line 1.
[38] Ray Rebuttal Testimony, page 10 at line 4.

ISSUE 7b: When Communications Authority wishes to add to or modify its collocation space or the equipment in that space, or to cable to that space, should Communications Authority be required to submit an application and to pay the associated application fee?

CA's Position on the Issue

Not for equipment replacement. AT&T's proposed language permits AT&T to charge CA an augment application fee in cases where CA does not order any service or change from AT&T but simply submits a revised equipment list to AT&T.

Discussion

Since collocation is intended to be TELRIC-based, a charge for a revised equipment list is inappropriate because AT&T does not incur costs when CA installs its own equipment and simply complies with the agreement's requirement to provide notice to AT&T of the change. In her direct testimony, Kemp testified, "CA's proposed language is another attempt to shift the cost of review of changes to CA's collocation arrangement to AT&T Florida. Further, it could be read to suggest that CA has the ability to modify its equipment and facilities in its collocation space with no oversight at all. Neither is acceptable."[39]

Kemp makes clear that the dispute at issue in collocation 7.5.1 revolves around AT&T's ability to charge for a "safety review" of CA's equipment (collected through a hyper-inflated "application fee"), and AT&T's ability to unilaterally decide whether or not that equipment may be collocated by CA in CA's own collocation space.

[39] Kemp Direct Testimony, page 20 at line 23.

While CA does not dispute that AT&T has the right to review CA's equipment list, AT&T has provided no citation to any authority which requires CA to pay for such a review. Federal law also does not give AT&T such broad discretion over what equipment it will or will not permit a CLEC to collocate. To the contrary, 47 CFR §51.323(c) states,

> Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment is not necessary for interconnection or access to unbundled network elements under the standards set forth in paragraph (b) of this section. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the incumbent LEC applies to its own equipment. n incumbent LEC may not object to the collocation of equipment on the ground that the equipment fails to comply with Network Equipment and Building Specifications performance standards. An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days of the denial a list of all equipment that the incumbent LEC locates at the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. This affidavit must set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; the incumbent LEC's basis for concluding that the requesting carrier's equipment does not meet this safety requirement; and the incumbent LEC's basis for concluding why collocation of equipment not meeting this safety requirement would compromise network safety.

AT&T's pricing list shows the charge for a Subsequent Application Fee to be $2236.00 (USOC- PE1CA). This is the fee that AT&T suggests is a reasonable cost-based fee for it to do nothing more than review CA's disclosure that CA replaced one piece of equipment with another. There is simply no way to reconcile the time required by AT&T with the enormous cost that it proposes.

AT&T's proposed language does not comply with this FCC rule, and AT&T has cited no legitimate cost incurred when CA replaces its own equipment and notifies AT&T that it has done so. CA has already stated that it would be fine with a reasonable fee of perhaps $25.00 for AT&T to review the one-page equipment disclosure in such a case, but AT&T has refused to engage in any discussions with CA on the matter.

Kemp testified in her rebuttal, "As to Mr. Ray's assertion that AT&T Florida is trying to charge CA 'to purchase a replacement piece of equipment', that is a red herring. If CA is replacing a piece of equipment with the same equipment, as opposed to modifying its equipment or adding new equipment, section 3.17.1 does not apply."[40] AT&T's position constitutes an unreasonable restriction upon CA. AT&T should be well aware of the rapid pace of technology advancement in telecommunications. When a piece of equipment fails, it is very common that the replacement piece will be a later model of the same equipment.

AT&T's ability to object to CA's collocated equipment is severely curtailed by 47 CFR §51.323(c), so it instead seeks to impose punitive, non-cost-based fees on CA for its "review" of the equipment disguised as an application fee. If AT&T may not object to the equipment, then it stands to reason that AT&T may not charge CA for "reviewing" the equipment. CA believes that it is reasonable for CA to be required to notify AT&T of what equipment it installs. However, unless CA needs more power, space or cross-connects, it should not be required to submit an application to AT&T to replace its own equipment.

[40] Kemp Rebuttal, page 13 at line 5.

AT&T's deceptive use of "application fees" to generate revenue when there is no real safety issue is made clear by Kemp's hearing testimony:[41]

> Q: So in the testimony AT&T has indicated that AT&T operates equipment in the central offices that are not NEBS certified and also not on the AT&T all equipment list. Why is it the case that AT&T has determined that it's safe for AT&T to operate a piece of equipment in the central office but not add that piece to the all equipment list that could be used by CLECs?
> A: There's equipment located in the central offices that AT&T operates that's not related to collocation at all. So an application for collocation is directly related to collocation. There may be other things in the building that provide telecommunications services that aren't related to CLECs or to collocation.
> Q: Ok. So after AT&T evaluates a specific piece of equipment that a CLEC wants to collocate and determines that it's safe, does AT&T automatically add it to its equipment list so other CLECs don't have to follow the same process, or is it every time it happens you have to go through the process?
> A: We don't add it to the list.
> Q: Why not?
> A: It might be a one-off situation and never be asked for again.
> Q: But if it's already been approved, then that just makes it cost the next CLEC more money. Is that the case?
> A: Not necessarily, because an application fee is an application fee."

This testimony first shows that AT&T's proposed language is not in compliance with 47 CFR §51.323(c) because Kemp admits that AT&T considers some equipment safe for its use but the same equipment unsafe for CLEC use. Further, Kemp admits that once a piece of equipment has passed AT&T's "safety review", it is then not added to the All Equipment List which forces each CLEC to endure the "safety review" for the same piece of equipment, over and over again.

[41] Hearing Transcript, 000661 at line 9.

In light of this testimony, there can be no doubt that AT&T is using this application-fee/safety-review process to create artificial costs and barriers to entry for CLECs. Therefore, CA believes that the Commission should adopt CA's proposed language for this issue.

ISSUE 8: Is 120 calendar days from the date of a request for an entrance facility, plus the ability to extend that time by an additional 30 days, adequate time for Communications Authority to place a cable in a manhole?

CA's Position on the Issue

No. CA believes that it is more reasonable to specify an initial period of 180 days for it to install its own fiber optics, and that an extension should be 90 days instead of 30 in case CA needs more time.

Discussion

The Telecom Act plainly states that it is intended to encourage competition, and CA believes there is no better measure of competition than a CLEC installing its own fiber optic network to serve the public. There are numerous hurdles and challenges that a CLEC may encounter when attempting to deploy its own fiber optic network, many of which are erected by AT&T. CA simply needs more time than is allowed by AT&T's proposed language.

AT&T has not demonstrated that it is harmed by the longer installation window or extension, and AT&T's language seems designed solely to increase CA's costs by forcing it to re-apply and double-pay for the entire arrangement when there are delays. Such delays could be caused by AT&T, by weather or other elements, and would unnecessarily increase CA's cost. CA has also removed the provision that requires the request for extension 15 days prior to the expiration of the original window, because AT&T has not demonstrated a need for such advance notice or harm to AT&T if notice is not given in advance.

AT&T has not cited any legal or regulatory authority for its proposed requirements. Therefore, CA believes that the Commission should adopt its language for issue 8.

ISSUE 9a: Should the ICA require Communications Authority to utilize an AT&T Florida AIS Tier 1 for CLEC-to-CLEC connection within a central office?

CA's Position on the Issue

No. AT&T is required to perform CLEC-to-CLEC cross-connects or permit a collocator to perform them.

Discussion

CA would incur substantial costs if it were required to utilize an AT&T AIS to install a cable to another Collocator from CA's central office collocation. AT&T has not demonstrated that it would be harmed by this provision, and CA believes that AT&T's language is intended solely to artificially increase CA's costs and to delay CA's entry into the market served by the central office where it is collocated. 47 CFR §51.323(h)(1) states:

> "An incumbent LEC shall provide, at the request of a collocating telecommunications carrier, a connection between the equipment in the collocated spaces of two or more telecommunications carriers, except to the extent the incumbent LEC permits the collocating parties to provide the requested connection for themselves or a connection is not required under paragraph (h)(2) of this section.

AT&T's position is directly contrary to this rule; it seeks to charge a non-cost-based "application fee" for a CLEC-to-CLEC cross-connect of $564.81 (USOC-PE1CA), and then seeks to require CA to hire an AIS to install the cross-connect at a "market-based price." In response to #16 of Staff's first set of interrogatories asking "Please explain a CLEC to CLEC connection in a Central Office?" Kemp responded "…CLECs must use an AIS Tier 1 vendor to place CLEC to CLEC connections…" This directly

conflicts with 47 CFR §51.323(h)(1) which requires AT&T to provide the connection itself or permit the CLEC to self-install.

47 CFR §51.323(h)(1) is clear—AT&T does not have to install the cross-connect itself; it only has to install the cross-connect if it will not permit a CLEC to do so. Since Ms. Kemp is convinced that chaos would ensue if a CLEC attempted to install its own cross-connect,[42] then AT&T's only other option is to install the cross-connect itself for a cost-based price.

Moreover, AT&T's application fee is clearly not cost-based. If AT&T is only reviewing a simple application to run a short cable between two CLECs, it begs logic to justify a charge of $564.81 to be cost-based. Kemp testified that AT&T previously did comply with 47 CFR §51.323(h)(1), "I believe the contracts might have enabled a CLEC to handle the situation without using an AIS Tier 1 vendor years ago. But the most—the current contracts require an AIS Tier 1, and that's probably in the last eight or nine years."[43] CA notes that is about how long it has been since a CLEC dared to try and arbitrate a new ICA in Florida.

Kemp was also asked at the hearing:

> Q: In the, in the UNE price list there's an element called co-carrier cross-connect. The USOC is PE1DT and the application fee is 560.41. So what is that for?
> A: I don't know.

In light of 47 CFR §51.323(h)(1), combined with the fact that collocation elements must be cost-based, CA believes that the Commission should adopt language which requires AT&T to comply with 47 CFR §51.323(h)(1) and install collocator-to-collocator cross-

[42] Kemp Direct Testimony, p. 23 at line 17.
[43] Hearing Transcript, page 000657 at line 25.

connects at a cost-based price which the Commission should set. Simply put, CA's issue is with AT&T's refusal to comply with 47 CFR §51.323(h)(1), forcing CA to pay unreasonable non-cost-based application fees and outrageously inflated AIS charges for a simple short cable run.

Indeed, other states have mandated just such a cross-connect at TELRIC-based UNE prices. The California Public Utilities Commission ("CPUC"), as one example, required exactly what CA is requesting.[44] This issue was raised by XO Communications in a case against AT&T California. The CPUC held that, based on federal law, AT&T California must offer cross-connects at TELRIC. [45] In 2007, AT&T agreed to charge TELRIC rates for impaired (non-competitive) central offices but continued to charge a cage to cage interconnection rate of $723.96 per month for unimpaired central offices. XO challenged that and the CPUC agreed that the rate should be TELRIC regardless of the categorization of the central offices. That case did not even address the ridiculous claim that an AIS must install the cross-connect. That was not a part of AT&T California's business practices, as such it was never a part of the interconnection agreement and not an issue in the case. AT&T has not explained why its use of AIS is not standard across all AT&T ILEC territories.

The CPUC followed the FCC's clear direction in the Local Competition Order. As the CPUC noted, "The FCC has interpreted Section 251(c)(6) to require ILECs to

[44] XO Communications Services, Inc. v. Pacific Bell Telephone Company d/b/a AT&T California, Case 09-07-021 (July 20, 2009), Decision 10-07-005, rehearing granted on issue of filed tariff doctrine, Decision 11-07-032. *See* specifically Decision 10-07-005 at pages 2-5 regarding TELRIC applicability to cross-connect rates: http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/120497.PDF. ("XO Decision")

[45] The agreed rate was $45.86, comprising a cross-connect fee and $0 in UNE transport. The original rate was $61.86 for a cross-connect and $600 in tariffed special access transport.

include CLEC-to-CLEC cross-connection as part of their obligation to provide collocation and to authorize ILECs to charge only TELRIC-based rates as part of the just, reasonable and nondiscriminatory rates, terms and conditions for collocation, including cross-connection."[46] The CPUC also cited a Colorado decision applying TELRIC to Qwest's cross-connection charges finding it persuasive on the issues.[47]

AT&T's proposed language on cross-connects attempts to flip federal law and state utility commission caselaw on its head and should be rejected.

[46] XO Decision at 3.
[47] Petition of Qwest Corporation for Arbitration of an Interconnection Agreement with Covad Communications Co., Colorado PUC Docket No. 04B-160T, Decision No. C05-0616, Order on Rehearing (March 30, 2005).

ISSUE 9b: Should CLEC-to-CLEC connections within a central office be required to utilize AT&T Florida common cable support structure?

CA's Position on the Issue

No. CA should be permitted to run CLEC-to-CLEC cross-connects to other collocators without using AT&T's common cable support structure if it can safety do so because of the proximity of the parties to each other.

Discussion

CA's language permits CA to directly connect to another Collocator to prevent such unnecessary costs only when the two Collocators are within ten feet of each other and when the connection can safely be made without use of AT&T's common cable support structure. AT&T has not demonstrated that it would be harmed by this provision, and CA believes that AT&T's language is intended solely to artificially increase CA's costs and to delay CA's entry into the market served by the central office where it is collocated.

47 CFR §51.323(h)(1) states:

> An incumbent LEC shall provide, at the request of a collocating telecommunications carrier, a connection between the equipment in the collocated spaces of two or more telecommunications carriers, except to the extent the incumbent LEC permits the collocating parties to provide the requested connection for themselves or a connection is not required under paragraph (h)(2) of this section.

In light of this rule, combined with the fact that collocation elements must be cost-based, CA does not believe that the issue of using AT&T common support structure is relevant. If AT&T were required by this agreement to comply with 47 CFR §51.323(h)(1) and install the cross-connect at a cost-based price, such as other states have mandated for

AT&T,[48] then AT&T could certainly install the cross-connect using its common cable supports (which must also be charged at a cost-based price) using the maximum safety and security that seems to be the cornerstone of every argument it makes. CA's issue is with AT&T's refusal to comply with 47 CFR §51.323(h)(1), forcing CA to pay unreasonable non-cost-based application fees and outrageously inflated AIS charges for a simple short cable run. AT&T argues that all cables must use its common cable support structure for "safety," and then uses the fact that other collocators' cables are also using that structure as the justification for requiring CA to hire an AIS at a non-cost-based price to run a CLEC-to-CLEC cross-connect. If AT&T were required to offer the cross-connect at a cost-based price on issue 9a (without a non-cost-based application fee), then this issue (9b) is moot because AT&T could use its common cable support structure without objection when it ran the cable.

[48] *Id.*

ISSUE 10: If equipment is improperly collocated (e.g., not previously identified on an approved application for collocation or not on authorized equipment list), or is a safety hazard, should Communications Authority be able to delay removal until the dispute is resolved?

CA's Position on the Issue

Yes. AT&T should be required to use the ICA's Dispute Resolution process to resolve all disputes, instead of having unilateral self-help remedies, while denying CA any such remedies.

Discussion

In Kemp's deposition regarding the removal of collocated equipment, Staff asked, "What would be the consequences of using the dispute resolution process?" Kemp responded, "Well, in our view, it would take a very long time. And with safety at sake, we worry about the safety of employees for AT&T and all their CLECs and the equipment for which AT&T and any other collocator in that area, so it's a timing issue."[49] Kemp was then asked, "That timing concern would apply to safety issues?" She responded, "Yes." Then Kemp was asked, "Are there any other categories where timing would be a concern?" to which Kemp responded, "There might be, but safety really is our focus when it comes to collocation."

It is clear that AT&T uses vague assertions about safety as its basis to avoid even the most basic parity between the parties. Its true intentions, however, are made clear by Kemp's last statement, where she states that safety is not the only situation in which

[49] Kemp Deposition, page 22 at line 7.

AT&T might seek to skip the Dispute Resolution process and put the CLEC out of business by forcing removal of its collocated equipment without due process.

It is also worthy of note that CA has proposed that the Dispute Resolution process specifically permit either party to seek resolution using the Commission's expedited dispute resolution process, which would by design result in a swift decision for both parties. AT&T has strongly opposed CA's attempt, preferring to deny the parties access to this process. Thus, AT&T's assertion that the Dispute Resolution process takes too long to be viable at AT&T's option is obviously disingenuous. The Dispute Resolution process would only be lengthy and prolonged at AT&T's insistence, which should not be a basis for permitting AT&T to skip the process whenever it so chooses.

47 CFR §51.323(c) states:

> Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment is not necessary for interconnection or access to unbundled network elements under the standards set forth in paragraph (b) of this section. An incumbent LEC may not object to the collocation of equipment on the grounds that the equipment does not comply with safety or engineering standards that are more stringent than the incumbent LEC applies to its own equipment. An incumbent LEC may not object to the collocation of equipment on the ground that the equipment fails to comply with Network Equipment and Building Specifications performance standards. An incumbent LEC that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within five business days of the denial a list of all equipment that the incumbent LEC locates at the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. This affidavit must set forth in detail: the exact safety requirement that the requesting carrier's equipment does not satisfy; the incumbent LEC's basis for concluding that the requesting carrier's equipment does not meet this safety requirement; and the incumbent LEC's basis for concluding why collocation of equipment not meeting this safety requirement would compromise network safety.

AT&T's language conflicts entirely with this rule, permitting AT&T to unilaterally demand removal of CA's equipment in violation of this rule without even affording CA the ability to operate while seeking Dispute Resolution under this ICA.

Notwithstanding the blatant disregard for 47 CFR §51.323(c), AT&T's witnesses are all over the map on this issue. In her direct testimony, Kemp stated,

> CA has control over what equipment it lists on its collocation application. If CA lists a piece of equipment that is not on the AEL, it of course should not install it. And CA certainly should not be rewarded for improperly installing an unapproved piece of equipment by being allowed to keep the equipment in place pending dispute resolution.[50]

But in her deposition, Kemp instead claimed the following, "Well, the NEBS list is not the only consideration to get a piece of equipment approved to be placed in a collocation arrangement. There is an AT&T all equipment list. And collocators may also submit equipment that's not on either list and, now, that can be considered for placement. So the NEBS list doesn't include everything that can be placed in a central office."[51]

In her direct testimony, Kemp said that CA cannot even list equipment on its application that is not on AT&T's AEL list. But in her deposition, she said that the process to get permission to use equipment, even equipment that is already NEBS certified or on the AEL, is to list it on the application. It seems clear that the AT&T process is not only unlawful under 47 CFR §51.323(c), but it's also applied in an arbitrary and capricious manner as shown by Ms. Kemp's conflicting testimony.

Ms. Kemp did not stop there. She went on to say in her deposition:

> There is equipment that appears on the NEBS list that's necessarily appropriate to be placed in a collocation arrangement. It might be okay to

[50] Kemp Direct, page 28 at line 1.
[51] Kemp Deposition, page 25 at line 8.

> be in a central office or a remote location, but not necessarily a collocation arrangement. So NEBS Is really not the final say for safety concerns and appropriateness for collocation.

This statement directly defies 47 CFR §51.323(c) in that Ms. Kemp conflates safety with appropriateness for collocation. 47 CFR §51.323(c) makes clear that AT&T must first convince the Commission that a piece of equipment is not necessary for access to UNEs or interconnection before it can deny a CLEC the right to collocate it on that basis. Further, 47 CFR §51.323(c) also makes clear that safety applies the same to AT&T as it does to collocators. Ms. Kemp's statement that a piece of equipment may be "safe" for AT&T to operate in the central office while it is "unsafe" for CA to operate the same equipment in its collocation is expressly forbidden by any fair reading of this rule. And yet, Ms. Kemp has stated here that is AT&T's policy.

CA believes that the Commission should approve its proposed language, adding also, "The parties shall comply with 47 CFR §51.323(c) at all times," to further clarify that AT&T must obey this rule since AT&T has already attempted to subvert the rule in favor of its unlawful policies.

ISSUE 11: Should the period of time in which the Billed Party must remit payment be thirty (30) days from the bill date or twenty (20) days from receipt of the bill?

CA's Position on the Issue

In the event that AT&T does not timely send a bill to CA, the due date should be adjusted to provide time for CA to review, dispute and/or remit payment as appropriate. AT&T would still be able to seek dispute resolution remedies under the good faith requirements of this agreement if CA unreasonably claimed that it did not receive bills in order to avoid late payment charges.

Discussion

As Mr. Ray's unchallenged testimony on this issue explains, AT&T has a well-established history of failure to properly and timely send complete bills to CLECs. Also in this proceeding, AT&T has admitted that its bills to CLECs are not always delivered timely.[52] CA has provided three examples of interconnection agreements between AT&T Florida and other CLECs which are still in force today in Florida and which contain provisions similar to CA's proposed language.[53] AT&T's language would therefore unfairly discriminate against CA.

For example, in Ray's Rebuttal Testimony, he stated,

> In 2015, Terra Nova has received AT&T bills more than once which were postmarked more than 10 days after the date printed on the bill and arrived by mail 20 days after the date printed on the bill. That only gives a CLEC 10 days to process the bill, file disputes, send payment and also allow for mail delays. Even if a CLEC processed, disputed and paid the bill on the same day that it was received in a case like this the payment could still be

[52] AT&T could send bills to CA with delivery confirmation to prove date of receipt if it chooses to do so. *See* Exhibit 4.
[53] CA Response to Staff's Second Set of Interrogatories

> considered late under AT&T's proposed language solely because of AT&T's delay in mailing.

AT&T has produced no evidence to the contrary, has not refuted this statement, and did not cross-examine Mr. Ray on this issue.

Since it has been established that AT&T sometimes mails bills ten or more days after the date on the bill, it seems obvious that the due date must be tied to the date that the bill is received rather than the date printed on the bill. Otherwise, AT&T would be permitted to delay mailing of bills (whether by malice, mistake or oversight) and would be rewarded for that by forcing CA to pay late payment charges on the bills which it did not timely receive and could not possibly pay "on time". CA therefore believes that the Commission should approve its language for Issue 11.

In her direct testimony, AT&T expert witness Patricia Pellerin ("Pellerin") testified,[54]

> Establishing the Bill Due Date on when a bill is received, as CA proposed, would require the billing party to obtain and verify proof of receipt in order to know when each bill was due. This would require a substantial revamping of AT&T Florida's billing systems, which treat payments from all other carriers in Florida as past-due if they are not made by the next bill date, i.e. within 30 days of the bill date. CA's language adds an additional administrative burden in that it would require the billing party to track the date the bill was received and compare it to the 30 calendar days from the bill date to determine which is later. CA's proposal complicates the billing process unnecessarily, would impose system modification costs on AT&T Florida that CA has not offered to pay, and is likely to lead to disputes.

She goes on to say, "CLECs that elect to receive their bills by snail mail must expect that there will sometimes be delays or lost bills, just as we all experience from time to time with our personal mail. However, that does not mean that the billing party, in this case

[54] Direct Testimony of Patricia Pellerin, page 4, at line 9. (Hereinafter "Pellerin Direct")

AT&T Florida, has failed to send the bill on time or is otherwise at fault for the delivery timing."[55]

Pellerin's statements are false in several respects. First, CA has already cited three ICAs that are active in Florida between CLECs and Bellsouth which contain language similar to CA's language and make the bill due date dependent upon the date received. Therefore, Ms. Pellerin's complaining about the terrible costs that AT&T must now incur to make widespread billing system changes is verifiably false; otherwise how it is dealing with those other CLECs who already have this language?

Ms. Pellerin's statement that AT&T currently treats "payments from all other carriers in Florida as past-due if they are not made by the next bill date, i.e. within 30 days of the bill date" is also verifiably false for the same reason. This seems to show that Ms. Pellerin is not actually familiar with AT&T's own billing systems about which she is testifying as an expert.

Further, Mr. Ray testified that the postmark on bills received in 2015 from AT&T Florida by Terra Nova was 10 days or more later than the date on the bills inside the postmarked envelope. AT&T Florida mails bills using its own postage meter, which affixes the postmark when AT&T applies the postage to each envelope. Therefore, the postmark is affixed by AT&T Florida before the mail is given to the postal service for delivery. This discrepancy cannot be explained away by Ms. Pellerin's excuses about mail delivery being unreliable; it can only be explained by AT&T Florida not actually mailing the bills timely as CA has alleged.

[55] Pellerin Direct, page 5 at line 14.

Pellerin further testified about PSC Order PSC-05-0975-FOF-TP from October 2005 which she stated supports AT&T's position. [56] CA argues that this decision is not on point because this decision was rendered at a time when the Commission had oversight authority over retail billing which it does not have today. As a result, parity with retail billing had meaning at the time of that order, while it has no meaning today because AT&T's retail billing is no longer regulated or subject to Commission oversight.

Pellerin went on to testify that the 2005 Order stated, "We find that Bellsouth shall not be ordered to make substantive changes to its billing systems on behalf of the Joint Petitioners, and at its own expense, in order to exceed 'parity' performance."[57] This indicates that Bellsouth successfully made the argument in the 2005 case that it would have to make substantial billing system changes and the Commission agreed on that basis. CA has shown that, because at least three other CLECs in Florida already have CA's requested terms, AT&T does not actually have to make sweeping changes to its billing systems in order to accommodate CA's request.

It is also worthy of note that CA has not requested any billing system changes from AT&T at all. CA simply desires the ability to successfully dispute Late Payment Charges when it does not receive bills on time from AT&T Florida. This request is reasonable on its face; nobody would desire to be compelled to pay Late Payment Charges upon a bill which they could not possibly have paid on time because of a delay in sending the bill by the billing party.

[56] Pellerin Direct, page 6 at line 3.
[57] Pellerin Direct

At hearing, CA's counsel asked Pellerin, "Are you aware that AT&T and its affiliates demand 60 days for the payment to CLECs for intercarrier compensation billing?" to which Pellerin replied "I'm not aware of that, no."[58] CA's counsel then asked, "Are you aware that AT&T and its affiliates dispute all late payment charges assessed by CLECs regardless of whether or not AT&T timely paid the CLEC's bill?" Pellerin replied "I have no knowledge about those."[59]

Attached as Exhibit 1, which is a dispute filed by AT&T's Heena Khan with Terra Nova Telecom on April 13, 2015 for Late Payment Charges. On page 2 of that dispute, the dispute reason is:

> "Hi, Greeting of the day! This is to bring to your notice that we received an Invoice 382G6214D041015 dated 04/15/2015, with due date 04/30/2015, which shows that we have 20 days to make the payment. As per the norms that we usually follow, AT&T gets 60days from the bill date to make the payment. Would request you to provide a signed document stating that AT&T would have to pay this bill within this duration, as this is an unusual case. Further, we request you to update the 28 day payment cycle on records to avoid delay of payment. Appreciate your assistance on the same. Thanks Heena Khan"[60]

In this example, AT&T admits that it did not pay within the time provided by Terra Nova's tariff, but disputes the Late Payment Charge anyway solely because it is AT&T. Then, AT&T demands that Terra Nova not enforce the payment terms in its tariff solely for bills sent to AT&T. AT&T further attempts to entitle itself to 60 day payment terms simply because it says so, and finally asks Terra Nova to change its CABS billing cycle to accommodate AT&T's wishes. Contrary to Ms. Pellerin's assertions, changing the

[58] Hearing Transcript, page 000312 at line 3.
[59] *Id.*
[60] *See* Exhibit 1.

billing cycle for all CABS bills is what a catastrophic billing system change would really look like. And it was AT&T, not CA, who demanded it.

The AT&T agent then closes with "to avoid delay of payment," ominously implying that payment will not be made until Terra Nova meets AT&T's demands. This should be contrasted with CA's simple request that it have 20 days to pay after it gets a bill, which Pellerin implies would cause AT&T to have to scrap its whole billing system and start over to accommodate.

Finally, since CA has cited three existing ICAs which contain its proposed language for this issue, it is now clear that AT&T's proposed language would be discriminatory against CA by affording some CLECs the protection of CA's proposed language while denying that protection to CA. This is an additional reason why CA believes that its language should be adopted.

ISSUE 12: i) Should a Discontinuance Notice allow the Billed Party fifteen (15) days or thirty (30) to remit payment to avoid service disruption or disconnection?

ii) Should the terms and conditions applicable to bills not paid on time apply to both disputed and undisputed charges?

Resolved.

ISSUE 13a: i) Should the definition of "Late Payment Charge" limit the applicability of such charges to undisputed charges not paid on time?

ii) Should Late Payment Charges apply if Communications Authority does not provide the necessary remittance information?

CA's Position on the Issue

CA has modified AT&T's language to clarify that only undisputed charges shall accrue late payment charges if not timely paid and removed language that would subject CA to late payment charges if CA does not submit remittance information.

Discussion

The dispute resolution process already provides for payment of retroactive late payment charges for any disputes resolved in AT&T's favor. CA's language seeks only clarification. Because AT&T has stated a preference for electronic payment, and in CA's experience sometimes remittance information is not properly transmitted when paying electronically, CA has eliminated the penalty for lack of remittance information. CA has no incentive to send payments without remittance information. The parties have access to dispute resolution if this becomes a chronic issue, but CA disagrees that late payment charges should apply solely due to remittance information issues if payment was actually received by AT&T on-time.

AT&T has testified that even in cases where the remittance information is missing or incorrect, it still receives and has use of the funds paid by CLECs as of the date received.[61] Therefore, AT&T's language would permit it to have use of the funds upon

[61] Ray Rebuttal

receipt but to impose Late Payment Charges upon those funds as if they had not been timely received. CA believes this is clearly unfair.

ISSUE 13b: Should the definition of "Past Due" be limited to undisputed charges that are not paid on time?

ISSUE 13c: Should the definition of "Unpaid Charges" be limited to undisputed charges that are not paid on time?

ISSUE 13d: Should Late Payment Charges apply only to undisputed charges?

CA's Position on the Issue

Yes. CA has modified AT&T's language to clarify that only undisputed charges shall accrue late payment charges if not timely paid, and notes that the dispute resolution process already provides for payment of retroactive late payment charges for any disputes resolved in AT&T's favor.

ISSUE 14a: Should the GTCs state that the parties shall provide each other Local Interconnection services or components at no charge?

CA's Position on the Issue

Yes. The parties should each bear their own costs for Local Interconnection.

Discussion

It is well settled industry standard policy that each party must bear its own costs for local interconnection, but AT&T has proposed language which could be interpreted to permit it to improperly charge for Local Interconnection facilities. CA's concern is borne out of Mr. Ray's recent experience. AT&T has begun to allege that certain rooms within its own Central Office are on its network and others are not. AT&T now seeks to charge CLECs for interconnection trunk cables connecting CLEC collocations within an AT&T Central Office to other rooms within the same Central Office to which the CLEC does not have access. CA believes this practice violates the spirit of the Telecom Act, and is also at odds with the prior positions of all ILECs, including AT&T and its predecessor BellSouth.

The previous positon, which CA agrees with, is that the entire AT&T Central Office is on AT&T's network and that a CLEC has met its burden to meet at the POI if it hands off local interconnection trunks at a collocation bay within the AT&T Central Office. CA should not be charged for intra-building circuits within that Central Office used for local interconnection.

AT&T Florida has attempted to cast CA as the "cost-causer" for local interconnection orders and has thus implied that local interconnection is a service that

solely benefits CA.[62] However, this premise is not true. Local interconnection is, by definition, a service that benefits both parties. It is used to exchange telephone call traffic between the parties. AT&T's proposed language, which CA has accepted, places the ordering burden for local interconnection upon CA.

However, just because CA has the ordering burden for something that is mutually beneficial does not mean that CA should absorb its own costs in addition to all of AT&T's costs as well. CA incurs costs of its own for local interconnection ordering, including the cost of attending Joint Planning Meetings, designing the circuits which will connect its network to AT&T at the POI, physically connecting its network to AT&T at the POI, placing local interconnection orders with AT&T, and then ensuring that the work is completed and the services are functioning correctly on the due date. AT&T has much the same costs on its side; while CA incurs cost to submit the order for local interconnection, AT&T incurs cost to process that order after CA submits it. Because local interconnection benefits the parties equally, each party should bear its own costs for local interconnection orders. This is what CA seeks to make clear with its proposed language.

Therefore, CA believes that the Commission should adopt its language for issue 14(a).

ISSUE 14b(i): Should an ASR supplement be required to extend the due date when the review and discussion of a trunk servicing order extends beyond 2 business days?

[62] *See* Pellerin Direct, page 19 at line 7.

CA's Position

No. AT&T routinely fails to complete Local Interconnection Orders for weeks or months past the agreed due date, while the CLEC tries in futility to get AT&T to properly complete the orders. CA should not be unfairly penalized for delays while AT&T is not penalized for its own delays.

Analysis

CA has provided several examples in Mr. Ray's testimony where AT&T Florida has caused unreasonable delays and then attempted to bill a CLEC for the delays caused by AT&T.[63] It is not parity for a CLEC to be required to resubmit an ASR when the due date is not met, while AT&T is permitted to let the due date pass for weeks or months without consequences.

In Pellerin's direct testimony, she was asked to respond to CA's concerns about AT&T being at fault for a due date being missed for a trunk order, and AT&T then requiring CA to submit a supplemental order solely because AT&T caused a delay and then AT&T billing CA for that order.[64] Pellerin side-stepped the question by responding "Again, the issue we're talking about is trunk servicing so we're talking about changing the size of an existing trunk group."[65]

Pellerin went on to raise the same objection in her rebuttal testimony, "Mr. Ray's testimony misses the mark completely. His rant about AT&T Florida's failures to complete trunk orders on time has nothing whatsoever to do with the limited context of

[63] CA Response to AT&T First Set of Interrogatories at page 21.
[64] Pellerin Direct, page 23, line 2.
[65] Pellerin Rebuttal, page 6, line 16.

Net. Int. section 4.6.4, which deals only with trunk servicing orders that are placed in held status for longer than two days…"

In both cases, Ms. Pellerin entirely ignored the fact that CA's proposed language for Network Interconnection 4.6.4 which reads, "Neither party shall charge the other for ASRs related to ordering, rearranging or disconnecting Local Interconnection trunks, including changes for due date changes and ordering intervals," clearly goes beyond the scope of AT&T's definition of Trunk Servicing and in fact applies to all Local Interconnection orders. AT&T has already pointed out in this proceeding that agreed language in GTC 3.2 states that, "The headings… are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement." However, Ms. Pellerin ignores that agreed language and attempts to cast CA's issue in Network Interconnection 4.6.4 as pertaining to Trunk Servicing Only.

Pellerin was again asked about this in her deposition and she stated, "And all the times that he talks about problems with Terra Nova with trunk orders and so forth, you know, I'm not going to talk about those disputes for a variety of reasons, not the least of which is they're not mine to deal with. But they also, I don't believe, have anything to do with trunk servicing, which is the language that we're talking about here."[66] Once again, Pellerin ignored CA's actual proposed language and relied, in violation of GTC 3.2, upon a heading in her refusal to address CA's concerns and proposed language. This appears

[66] Pellerin Deposition, page 52 at line 5.

to be a deliberate obfuscation because Pellerin goes on to state, "Typically our contracts make clear that headings don't control."[67]

Pellerin suggests that CA should have to submit a supplemental order when AT&T does not install service by the due date that it provided, because AT&T's performance metrics are measured for timely order processing.[68] However, if AT&T is permitted to require CA to change the due date solely because AT&T missed the due date that it originally had provided, that has the effect of falsifying AT&T's performance metrics which are designed to reflect that it missed the due date.

It makes no logical sense that AT&T's failure to perform should then require CA to place another order and also pay for that new order to conceal the fact that AT&T failed to perform. Pellerin attempts to explain this away as "…it is unreasonable to hold AT&T Florida to the original due date when an order is on hold pending ongoing discussions about the particulars of the order itself."[69]

Pellerin's statements betray her lack of familiarity with how AT&T Florida's process actually works. The parties first must conduct a Joint Planning Conference related to the new interconnection. This planning conference, among other things, results in both parties asking all questions that they have about the proposed interconnection and then AT&T issuing a Project ID for the interconnection project. This Project ID is required in order for CA to submit any orders for interconnection, without which the orders will be automatically rejected by AT&T. CA then submits its order for Local Interconnection with the Project ID. AT&T has a reasonable time to review that order. If

[67] Pellerin Deposition, page 56 at line 13.
[68] Pellerin Direct, page 19 at line 3.
[69] Pellerin Direct, page 19 at line 3.

there's something wrong with the order or AT&T has questions, then that is addressed before AT&T provides a due date for the order. After AT&T provides a due date, called a Firm Order Confirmation ("FOC"), which is the parties' agreement that all questions and issues have been resolved with the order and this is the date upon which the services will be installed. After the FOC is issued, it is too late for AT&T to then claim that there need to be more "ongoing discussions" between the parties and use that as an excuse to cause additional delays. The penalties that Pellerin cites for AT&T missing a due date do not apply to any Joint Planning discussions, because those discussions occur several steps in the process before the FOC due date is ever issued by AT&T.

Even if everything Pellerin testified to was correct, it would be just as unreasonable to force CA to pay for due date change orders caused by AT&T's demand for "ongoing discussions" as it would be to penalize AT&T for those discussions via performance metrics. Pellerin attempts to justify an actual unreasonable condition desired by AT&T (requiring CA to pay for due date changes caused by AT&T) in order to avoid an imaginary unreasonable condition (AT&T suffering performance penalties during joint planning discussions).

Therefore, CA believes that the Commission should adopt its language for issue 14(b)(i).

ISSUE 14b(ii): Should AT&T Florida be obligated to process Communications Authority's ASRs at no charge?

CA's Position on the Issue

Although this Agreement places the ordering burden upon CA, Local Interconnection trunks are for the benefit of both parties. CA should bear its own costs to submit a Local Interconnection order, and AT&T should bear its own costs to process that order.

Discussion

Industry standard is that "each party bears its own costs" for Local Interconnection trunking. CA rejects AT&T's characterization that CA is the "cost causer" and that CA is the sole beneficiary of Local Interconnection Trunks. Local Interconnection Trunks benefit both parties equally, permitting their respective subscribers to reach each other.

In Pellerin's rebuttal testimony, she was asked "Is it AT&T Florida's position that Communications Authority should be charged for any and all ASRs?" She responded. "Yes, and in fact they've agreed to language that they will be, and that is in the pricing schedule attachment Section 1.7.4."[70]

First, AT&T refused to engage in any discussions or negotiations with CA about pricing, and so nothing about the pricing attachment has been agreed to between the parties. Second, there are no specific charges in the pricing attachment for Local Interconnection. There are only non-specific charges for ordering of various elements, which could be construed to mean Local Interconnection or could be some other type of

[70] Pellerin Rebuttal, page 24, line 2.

trunk order that is not for Local Interconnection. CA's language was designed to clarify that while not all trunk orders should be processed at no charge, Local Interconnection Trunks benefit both parties and should not be charged. CA believes that it is well-settled that each party is required to absorb its own costs for Local Interconnection, and that CA's cost is the cost of placing the order and AT&T's cost is the cost of processing the order.

At hearing, Pellerin initially attempted to mischaracterize CA's position, "It appeared from Mr. Ray's testimony that he was intending that AT&T would never charge Communications Authority for any ASR associated with any type of trunk order ever. And so even though Section 4.6 of the network interconnection attachment is associated with trunk servicing, it appeared to me that Communications Authority would look to expand the interpretation of that language to include all trunk orders, which is also consistent with their proposal that the trunk charges in the pricing sheet be zero."[71] Pellerin then testified in the opposite:

> Q: Wasn't Mr. Ray actually testifying in that situation about local interconnection orders, not just trunk servicing?
> A: He was—as I recall, he was talking about local interconnection trunk orders that might or might not be trunk servicing related."

Pellerin later admitted that CA's language was understood not to mean that all trunk orders should be free when CA counsel asked, "Isn't it true that Communications Authority is only saying that local interconnection should not be billable?" to which Pellerin answered, "That's what their language says, yes."[72]

[71] Hearing Transcript, 000320 at line 19.
[72] *Id.*, 000323 at line 16.

AT&T has not cited to any legal or regulatory requirement that CLECs pay AT&T for Local Interconnection orders which benefit both parties. Therefore, CA believes that the Commission should adopt its language for issue 14(b)(ii).

ISSUE 15i: Insurance certificate delivery timeframe

Resolved.

ISSUE 15(ii): May Communications Authority exclude explosion, collapse and underground damage coverage from its Commercial General Liability policy if it will not engage in such work?

CA's Position on the Issue

Yes. AT&T's proposed language would require CA to obtain costly insurance for collocations, conduits and pole attachments even if CA has not ordered or used those elements. This artificially increases CA's costs. CA's language provides the same protections but only if CA is utilizing the elements to be insured.

Discussion

CA rejects AT&T's comments on this issue as verifiably false. AT&T has a very effective mechanism to determine whether CA is engaged in the subject work or not, because CA is not entitled to work in AT&T manholes, on AT&T poles, or in AT&T Central Offices until CA has submitted and AT&T has processed a Conduit, Pole Attachment, or Collocation application. AT&T already verifies CLEC insurance as part of this application process, and so AT&T's proposed language in this item would serve solely to increase CA's costs by requiring the insurance prior to the submission of any applications by CA to do any work. Many CLECs operate in a limited capacity after inception and wait for years before deploying their own extensive networks, and therefore would not need such coverage until their deployment begins. Moreover, CA may not be able to obtain insurance for hazardous activities that it is not engaged in and for which it does not have expertise.

In her rebuttal testimony, Pellerin testified, "Collocation section 14.1.2 obligates CA to bring its fiber facilities to the entrance manhole so AT&T Florida can pull them through to the cable vault. To bring its facilities to the manhole, CA must enter the underground structure. And entering the underground structure is 'engaging in such work'."[73]

CA does not disagree with anything that Pellerin said above. However, most collocators do not operate a fiber-optic network of their own and therefore do not ever need to enter a manhole. CA intends to operate throughout the State of Florida, and certainly does not intend to install a fiber optic network of its own into hundreds of central offices where it might collocate. Therefore, CA's language makes clear that CA may exclude insurance coverages for certain types of work that it will not perform.

Pellerin further testified, "And Section 4.6.2 states that CA must provide AT&T Florida proof of insurance prior to commencing work."[74] This seems to make CA's point; CA would still have to get insurance for explosion and collapse before AT&T would approve any work that involved working in a manhole. AT&T would have to approve the work before CA could engage in that work. So AT&T has no real risk here.

AT&T has been unable to cite any basis for its purported worry. CA counsel questioned Pellerin at hearing:

> Q: Are you aware of any explosions or substantial damage that has occurred to an ILEC's central office since CLECs were allowed to collocate?
> A: Not that I've been aware of.[75]

[73] Pellerin Rebuttal, page 8.
[74] Pellerin Rebuttal, page 9 at line 2.
[75] Hearing Transcript, 000325 at line 15.

In his rebuttal testimony, Ray testified, "It is impossible to proceed with accessing AT&T structures or to perform any other attachments to AT&T property without AT&T's acceptance of the CLEC's application for such work. The application process requires full insurance information to be provided upon submittal."[76] AT&T has not refuted this claim. AT&T did not cross-examine Mr. Ray on this issue.

Therefore, CA believes that the Commission should adopt its language for issue 15(ii).

[76] Ray Rebuttal, page 19 at line 19.

ISSUE 16: Which party's insurance requirements are appropriate for the ICA when Communications Authority is collocating?

CA's Position on the Issue

CA believes that its proposed general liability limits are adequate to insure all actual risks caused by CA's activities when collocating.

Discussion

AT&T has not shown that it incurs risk greater than CA's proposed insurance limits, nor that any CLEC has ever had inadequate insurance to cover a loss by AT&T. However, there are still ICAs in force today between AT&T and other CLECs with lower limits than what AT&T has attempted to require CA to carry. Upon information and belief, AT&T has not demanded those CLECs amend their ICAs to increase the insurance requirements.

CA has limited the Fire Liability coverage because collocated equipment must comply with the National Equipment Building Standards ("NEBS"), which does not pose substantial fire risk by design. CA has not objected to AT&T's additional requirement in GTC 6.2.5 for an additional $1,000.000.00 Umbrella Policy.

In Staff's deposition of Pellerin's, she was asked, "Have there been any accidents or incidents that have occurred that you know of?" She responded, "I am not aware of any in particular in Florida" and then went on to describe two central office fires that occurred in other states.[77] One fire was in Hinsdale, Illinois and the other in Southern Manhattan. She, however, failed to disclose that these fires occurred well before the Telecom Act was passed, and so could not have in any way been caused by a CLEC.

[77] Pellerin Deposition, page 50 at line 1.

This came out at hearing in response to CA counsel's follow-up with Pellerin:[78]

Q: Isn't it true that the Illinois Bell situation in Hinsdale was in 1987?
A: Sounds about right.
Q: And the New York Telephone incident occurred in 1975; is that true?
A: That's probably about right.

Not only did both incidents occur well before CLECs even existed, these incidents also occurred well before the current NEBS standards were developed to prevent exactly this sort of occurrence.[79] And it has; for nearly three decades there have been no further incidents of this type in any ILEC central office anywhere in the nation.

Pellerin provided testimony stating, "Virtually all of the dozens of ICAs that AT&T Florida has negotiated with CLECs and that this Commission has approved in recent years contain the insurance limits that AT&T Florida is proposing here."[80] Pellerin fails to note, however, that in recent years there have been no agreements arbitrated by this Commission in Florida between AT&T and CLECs. CA is the first one is nearly a decade. Therefore, all of the agreements referenced by Pellerin closely resemble AT&T's boilerplate agreement.

In footnote 6 to that statement, she did acknowledge, "There are some relatively recent ICAs that were adoptions of earlier vintage ICAs in which the insurance terms and conditions are less comprehensive than AT&T Florida proposes today, but many of those contain the minimum aggregate limit of $10 million."[81] The "vintage ICAs" referenced by the footnote more closely resemble the limits that CA is seeking, and AT&T has made

[78] Hearing Transcript, 00325 at line 1.
[79] *See*, Hinsdale Central Office Fire Report at https://www.patreon.com/file?s=246460&h=1205377&i=42006 (incident occurred May 8, 1988); *see also*, http://www.privateline.com/issues/p.l.No11A.html (Manhattan fire occurred February 27, 1975).
[80] Pellerin Direct, page 23 at line 6.
[81] *Id*. at footnote 6.

no showing that it has ever had any issue with the limits in those "vintage ICAs" being inadequate.

AT&T has been unable to cite any basis for its purported insurance concerns. CA counsel questioned:

> Q: Are you aware of any explosions or substantial damage that has occurred to an ILEC's central office since CLECs were allowed to collocate?
> A: Not that I've been aware of.[82]
> …
> Q: Are you aware if AT&T has ever had to seek insurance coverage from a CLEC since 1997?
> A: I am anecdotally aware of an event somewhere where there was a wrench that was dropped into equipment that caused damage. It was not a fire; it was other types of damage. But that's only anecdotal.[83]

Given AT&T's failure to provide any compelling evidence supporting its proposed insurance requirements, they should be rejected. CA's insurance limits should be approved.

[82] Hearing Transcript, page 000325 at line 15.
[83] *Id.*, page 000325 at line 2.

ISSUE 17(i): What notification interval should Communications Authority provide to AT&T Florida for a proposed assignment or transfer?

Resolved**.**

ISSUE 17(ii): Should AT&T Florida be obligated to recognize an assignment or transfer of the ICA that the ICA does not permit?

Resolved.

ISSUE 17(iii): Should the ICA disallow assignment or transfer of the ICA to an Affiliate that has its own ICA in Florida?

CA's Position on the Issue

No. The language proposed by AT&T would serve to prevent CA's purchase by, or purchase of, another CLEC by attempting to deny the party the ability to obtain CA's interconnection agreement if the other party already has one.

Discussion

AT&T's proposed language is completely unfair and it is unclear what real world harm AT&T is allegedly trying to prevent. This would substantially devalue CA's assets both by the value of having conducted this arbitration to obtain a reasonable ICA and also by potentially making services provided under this ICA unavailable or unaffordable to a purchaser with a different ICA.

When SBC purchased BellSouth in 2006 and became AT&T, CLECs were not in any position to dictate terms as AT&T now seeks to do even though AT&T assumed all of BellSouth's ICAs in Florida with CLECs. In fact, the former CLEC TCG Florida is a wholly-owned CLEC subsidiary of AT&T today, and it enjoys access to AT&T Florida's network facilities under an agreement that is not filed with the Florida Public Service

Commission (and therefore unavailable for adoption). TCG Florida also refuses to pay CLEC access bills even while blaming AT&T Florida for records errors that led to the bills.[84] TCG Florida takes the position that it is separate from AT&T Florida and operates free from all of AT&T Florida's obligations. So while AT&T engages in such shell games to its own advantage, it seeks to deny CLECs even the most basic of fair terms. AT&T has also not cited any legal or statutory support for its position. This restriction should not be allowed.

Therefore, CA believes that the Commission should adopt its language for issue 17.

[84] *See* Exhibit 2.

ISSUE 18: Should the ICA expire on a date certain that is two years plus 90 days from the date the ICA is sent to Communications Authority for execution, or should the term of the ICA be five years from the effective date?

CA's Position on the Issue

Yes. CA is a small company with limited resources, has expended tremendous resources to arbitrate several dozen issues that AT&T initially refused to discuss. CA believes that AT&T has not shown any evidence as to why a shorter term is more appropriate.

Discussion

AT&T's justifications around this issue are possibly the most disingenuous arguments AT&T has made in this proceeding. AT&T has claimed that it desires a two year term due to expected changes in the marketplace over the next two years, but AT&T has a well-established history of exercising "Change of Law" provisions in order to accomplish changes to ICAs prior to the expiration of their term when it serves AT&T's interests to do so. AT&T has not shown any reason why it would be unable to invoke Change of Law for this Agreement, but instead has demanded a two-year term which would artificially and needlessly increase CA's costs.

Meanwhile, dozens of ICAs in Florida (and nationwide) have been in evergreen status for nearly a decade. AT&T has chosen not to send a notice of termination to those ICAs.[85] There has been tremendous "technological advancement" and "changes in the marketplace" during that time.

[85] AT&T's strategy was probably to avoid just this kind of arbitration with those carriers that have much larger resources.

Despite AT&T's claims that Mr. Ray was being untruthful,[86] it is in fact true that during negotiation, AT&T verbally offered to provide assurance to CA under separate cover that it would permit the Agreement to similarly run longer than two years in "evergreen" status, but that AT&T desired the two year term in order to limit the time that other CLECs may adopt this Agreement. CA rejected that offer, and believes that such tactics are not in good faith and are blatantly anticompetitive. AT&T has not shown what harm it would suffer if CA is granted a five year term like other CLECs that came before it.

Therefore, CA believes that the Commission should adopt its language for issue 18.

[86] Mr. Ray has provided a sworn affidavit regarding this issue. AT&T has merely cited "company policy" as a reason that the offer would not have been made. This is exactly the type of situation that CA was intending to avoid by refusing to sign the NDA at the outset of the negotiation window. It would have muzzled Mr. Ray and tied CA's hands during this arbitration.

ISSUE 19: Should termination due to failure to correct a material breach be prohibited if the Dispute Resolution process has been invoked but not concluded?

CA's Position on the Issue

Yes. AT&T's proposed language would allow a simple allegation of breach, and without any proof or due process or evidence, to result in termination of all service to CA and its customers. This would force CA out of business.

Discussion

Although AT&T's language throughout the Draft ICA repeatedly provides that CA's sole remedy for any dispute or issue should be the Agreement's dispute resolution provision, AT&T repeatedly seeks to provide itself with exclusive, one-sided alternative remedies such as this one. AT&T's proposed language is clearly anti-competitive, and does not encourage competition as the Telecom Act requires.

If AT&T alleges that CA has breached the Agreement and CA disputes the allegation, AT&T should be required to follow the Dispute Resolution provision and prove its allegations before causing fatal harm to CA and CA customers. AT&T has access to the Commission's new expedited dispute resolution process for a speedy decision if it so chooses. AT&T has pointed out in response to this issue that CA has the ability to invoke dispute resolution also, which is true. However, CA's language to which AT&T objects here is not designed to force AT&T to invoke dispute resolution; rather it is designed to protect CA from harm by AT&T if either party invokes dispute resolution which has not been concluded.

Under AT&T's proposed language, CA would have the right to invoke dispute resolution, but AT&T would then have the right to ignore that and drive CA out of

business anyway before the dispute is resolved. AT&T suggests that the now-deceased CA could then sue AT&T for damages if it wanted to. This permits AT&T to at best pay a small amount of damages after eliminating its competitor and causing a bankruptcy. Of course CA would not have the resources to sue AT&T after being put out of business by AT&T's actions. In any conceivable situation, it is illogical to permit AT&T to terminate the agreement and services until disputes are resolved.

In considering this issue, it's important to note that termination of an ICA is a lose-lose proposition for any CLEC and conversely a win-win proposition for AT&T. If AT&T terminates an ICA, AT&T is never harmed by the termination and the CLEC is always destroyed. If a CLEC terminates an ICA, AT&T is never harmed by the termination and the CLEC is always destroyed. This is why Pellerin's belabored explanation in her direct testimony is misplaced.[87] Her example assumes that the ILEC/CLEC relationship is identical to a traditional business to business relationship where a contract is voluntary, the parties to the contract are equals, both parties desire the relationship and each has a vested interest in keeping the other party satisfied. That is clearly not the case between an ILEC and a CLEC and the FCC made that point clear from the inception of competition.

AT&T has such monopoly power, it would suffer comparatively inconsequential damage if it destroyed a CLEC even if it later was required to pay damages for doing so without cause. If permitted to act in such a fashion, it would clearly be in AT&T's interests to destroy a CLEC and just "pay the fine" in order to reclaim its monopoly. This

[87] Pellerin Direct, page 33 at line 9.

realization was central to the creation of the 1996 Act and the resulting regulations in the first place under which AT&T is compelled to enter into this ICA.[88]

In her direct testimony, Ms. Pellerin stated:

> CA's proposed language would improperly obligate AT&T Florida to continue operating pursuant to the ICA for a prolonged period of time notwithstanding CA's material breach.
> …during this protracted time, which could take years, CA would have no obligation to cure the breach and AT&T Florida would have no recourse.
> Q: WOULD THE COMMISSION'S EXPEDITED DISPUTE RESOLUTION PROCESS BE AVAILABLE TO AT&T FLORIDA, AS CA CLAIMS?
> A: No. The parties' ICA will include a comprehensive dispute resolution provision (GT&C section 13), and the parties agreed in section 13.2.1 that the dispute resolution procedures will apply 'to any controversy or claim arising out of or relating to this Agreement or its breach.' Pursuant to Florida Administrative Code, the Commission's expedited dispute resolution process is available only for resolution of disputes *not* (emphasis original) governed by the dispute resolution provisions of the ICA. (footnote 7)." Footnote 7 states "Rule 25-22.0365(5)(d) of the Florida Administrative Code states that a request for expedited proceeding must include: 'A statement that the complainant company attempted to resolve the dispute informally and *the dispute is not otherwise governed by dispute resolution provisions contained in the parties' relevant interconnection agreement."* (Emphases added by AT&T in testimony)[89]

Pellerin's statements above are made in bad faith. AT&T is certainly aware that CA has proposed, from the beginning, that the Dispute Resolution section of this ICA should specifically permit the use of the Commission's expedited process by either party as envisioned in Rule 25-22.0365(5)(d). AT&T has objected to that, and it is an issue to be decided in this very arbitration (issue 29). If CA prevails on issue 29, then the agreement will permit the parties to use the expedited process. The citation to Rule 25-

[88] *See* Local Competition Order at par. 10, "… an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network."
[89] Pellerin Direct, page 32 at line 2.

22.0365(5)(d) clearly shows the word "otherwise," which indicates that if the ICA permits the parties to use the expedited proceeding then they will have access to it. Even if AT&T were to prevail on issue 29, then AT&T would only be denied an expedited resolution to disputes because it deliberately denied itself access to that process. It is therefore disingenuous for AT&T to complain that it will not have access to swift dispute resolution when its own actions would be solely responsible for that being the case.

It is unthinkable that, having denied itself access to swift dispute resolution, AT&T should then be entitled to exercise its tremendous market power to terminate the ICA and destroy its tiny competitor without due process. CA believes that the Commission should adopt its language for this issue, modified as suggested by CA to require a party to post a bond if it loses a Dispute Resolution proceeding before the Commission and decides to appeal.[90] This would provide for an expedited resolution and give both parties finality in a timely manner.

[90] Ray Rebuttal, page 22 at line 21.

ISSUE 20: Should AT&T Florida be permitted to reject Communications Authority's request to negotiate a new ICA when Communications Authority has a disputed outstanding balance under this ICA?

CA's Position on the Issue

No. AT&T's language would allow it to refuse to cooperate with CA to resolve bona fide billing disputes, fail to invoke the dispute resolution provision, and then refuse to negotiate a successor agreement, essentially blackmailing CA into paying disputed charges to continue its operations.

Discussion

This is another example of AT&T repeatedly seeking to provide itself with exclusive, one-sided alternative remedies. AT&T is already entitled to terminate the Agreement for breach, and if it so terminates, there would be no requirement to negotiate a successor. AT&T should not have the right to refuse negotiations simply because it has not pursued the remedies available to it under this Agreement to resolve disputes in good faith with CA.

CA believes that there is common ground on this issue, and a solution can be reached that addresses the concerns of both parties. Just as Pellerin denied that AT&T would blackmail CA to force it to pay disputed monies to continue operating,[91] CA denies that it would ever use the negotiation process in order to get a new ICA to avoid payment of legitimate charges under this ICA.

[91] Pellerin Direct, page 35 at line 4.

Pellerin testified at hearing:

> "The language in GT&C Section 8.4.6 says that AT&T may reject a request from Communications Authority to initiate negotiations for a new agreement. It does not say anything about AT&T terminating the existing agreement to negotiate a new one."[92]

CA Counsel then asked:

> Q: Ok, so in that situation isn't it the case that CA would be stuck because they'd be required to negotiate a new interconnection agreement because of the termination, but they wouldn't be able to under the terms because there's an outstanding billing dispute?
> A: When you look at the contract language in 8.4.6, it does not say that the parties could not negotiate a new agreement if AT&T was the one who initiate the negotiation.[93]

Thus, Pellerin implies, but does not outright say, that if AT&T noticed this agreement for expiration, the parties would then negotiate in good faith a new agreement even if there were pending billing disputes between the parties under this agreement at the time. CA accepts this premise, but notes that AT&T's proposed language conflicts with Ms. Pellerin's testimony.

Pellerin further confirmed that she is not familiar with CLEC billing disputes at all when questioned by Staff at hearing:

> Q: And is it rare for a CLEC such as Communications Authority to have amounts in dispute?
> A: I don't know how common it is.[94]

Therefore, CA proposes that the Commission adopt CA's language with these changes:

[92] Hearing Transcript, page 0347 at line 21.
[93] Hearing Transcript, page 0348 at line 7.
[94] Hearing Transcript, page 00382 at line 8.

"If a new interconnection agreement is executed by the parties while billing disputes are pending under this agreement, the terms and conditions of this agreement (and not any successor agreement) shall govern all such billed amounts and billing disputes unless otherwise agreed by both parties."

In the alternative, CA would also accept AT&T's language per Ms. Pellerin's testimony, if it were modified to read:

> 1.1.1 AT&T may reject a request under Section 252 to initiate negotiations for a new agreement if **1.** CLEC has an **undisputed** outstanding balance under this Agreement **or 2. CLEC has a disputed outstanding balance under this agreement and AT&T has not noticed this agreement for termination solely because the term has expired**. CLEC may send a subsequent notice under Section 252 when the outstanding balance has been paid in full.

CA believes that this proposed language correctly captures what Pellerin testified AT&T's actions would be. On May 29, 2015, CA offered to settle this issue with AT&T as described above but the parties did not reach agreement.

ISSUE 21: Should Communications Authority be responsible for Late Payment Charges when Communications Authority's payment is delayed as a result of its failure to use electronic funds credit transfers through the ACH network?

Resolved.

ISSUE 22a: Should the disputing party be required to use the billing party's preferred form or method to communicate billing disputes?

ISSUE 22b: Should Communications Authority use AT&T Florida's form to notify AT&T Florida that it is disputing a bill?

CA's Position on the Issues

No. CA sees no reason why AT&T should not process disputes in good faith solely because they are not on a special form. CA believes that any mechanism whereby the billing party is provided written notice of a dispute which contains sufficient details to describe the dispute should be adequate.

Discussion

Incorrect billing in the telecommunications industry is a part of doing business for CLECs. Mr. Ray has testified about his experience with AT&T's history of inaccurate CLEC billing.[95] AT&T has acknowledged that its bills are not always correct. Mr. Ray has provided unimpeached testimony regarding AT&T's failure to timely resolve disputes in good faith.

[95]CA Response to AT&T First Set of Interrogatories at page 13.

As a result, CLECs must devote substantial resources to AT&T billing disputes month after month. CA has its own automated systems which can automatically submit billing disputes to AT&T when appropriate, which saves CA considerable time and resources. CA's automated process provides all information required by Section 13.4 of this Agreement for billing disputes and emails the CA form to the address provided by AT&T for that purpose.

Requiring the use of AT&T's "special form" spreadsheet for each dispute submittal requires substantial extra resources to be allocated by CA to the processing of billing disputes, as CA must dedicate one or more employees to manually take the dispute details from CA's dispute form and manually transcribe those same details upon AT&T's form. Use of AT&T's form provides no information that CA's form does not provide, while CA's form provides more room for details required by AT&T but which may not fit on AT&T's form. This manual process of transcribing from CA's form to AT&T's form also unnecessarily increases the likelihood of errors not present with the automated system.

CA provided a copy of its form to AT&T in response to AT&T's first set of discovery, and AT&T has raised no specific issues with CA's form. Since both forms provide the exact same information and both forms are emailed to the same AT&T email address, requiring the use of AT&T's form is simply an extra burden placed by AT&T upon its competitor. CA sees no reason why AT&T should not process disputes in good faith solely because they are not on a special form. CA believes that any mechanism whereby the billing party is provided written notice of a dispute which contains sufficient

details to describe the dispute should be adequate, and CA is aware of no other ILEC in Florida which will not accept CA's form.

In her direct testimony, Pellerin used an analogy to argue that CA should be required to use AT&T's dispute form just like taxpayers are required to use IRS forms for filing taxes.[96] This example illustrates AT&T's (and Pellerin's) view that AT&T is the ultimate authority for everything and must not be questioned. CA does not agree with this view.

First, taxpayers must file returns on IRS forms because that is federal law. There is no federal (or any other) law that requires use of AT&T's special dispute form. AT&T has no governmental authority, even though it seems to act as if it does. Also, taxpayers are not filing their taxes in response to a government billing error or hundreds or thousands of government billing errors. Filing taxes is something that all Americans must do only once each year, and that process is non-discriminatory. To the contrary, CA's billing disputes must be filed solely because AT&T has billed CA incorrectly. This is something that should be rare, but in practice is not. In fact, CLECs are generally required to submit many disputes each month to AT&T because of AT&T's tendency to systemically bill incorrectly as Mr. Ray has shown.

The US Government not only permits, but encourages tax software vendors to mechanize this process and submit the data directly from those vendors' systems. This helps everyone. AT&T here takes the opposite position which requires CA to complete a time-consuming manual dispute process instead of an automated one.

[96] Pellerin Direct, page 39 at line 8.

Finally, it's important that this entire dispute process is necessary because of AT&T's inability or unwillingness to bill CLECs correctly. Pellerin states "…just as it would be unmanageable for the government if individuals insisted on using their own forms, so it would be unmanageable for AT&T Florida – and would cost AT&T Florida time and money – if each CLEC used its own preferred method for communicating billing dispute information."[97]

To be clear, it costs CLECs substantial time and resources to audit AT&T's bills each month and file disputes each month for incorrect billing. CLECs are far smaller than AT&T and a CLEC's resources are far more scarce than are AT&T's. Since billing disputes arise solely because of AT&T Florida billing errors in the first place, it does not seem inappropriate for AT&T to expend time and money to actually process CLEC billing disputes caused by AT&T's errors. After all, if the CLEC turns out to be wrong, the CLEC is going to have to pay Late Payment Charges upon the disputed funds after the dispute process concludes. This compensates AT&T for the trouble if AT&T is correct and the dispute is unfounded. On the other hand, if the CLEC is right, AT&T wants it to assume all risks, pay all costs, and do all work to get AT&T's errors corrected month after month while AT&T has no costs, liability or penalty of any kind for its errors and no incentives to bill correctly to start with.

Pellerin confirmed this at hearing, "Well, the problem is that AT&T has a mechanized system that handles the billing disputes. What you're suggesting is that AT&T manually handle every single bill dispute that comes from CA, which is what

[97] *Id.* at line 13.

would be required with CA's form."[98] Pellerin first testified at hearing that CA's dispute form was inadequate, but then admitted that she doesn't really understand how AT&T's disputes process works herself.[99] At hearing, Pellerin was asked:

> Q: Have you reviewed Communications Authority's billing dispute form that they send to—or intend to send to all ILECs?
> A: Yes.
> Q: Does it contain the information necessary to process, make a determination on a billing dispute?
> A: It does not contain all of the information that AT&T requires, no.
> Q: Ok, what specifically is missing?
> A: Two things I noticed. One, it does not include the USOC, and the other is that it does not include the amount of the bill.
> Q: I'm sorry, can you elaborate on the amount of the bill?
> A: If the bill is $100.00 and CA is disputing $25, both numbers would need to appear, and CA's form only would have the $25 amount.[100]

CA's counsel continued by asking:

> Q: Let me ask what the relevance and necessity of a field that has the total amount of the bill versus just having what is actually being disputed? What does is matter if it's $100 total and a $25 dispute?
> A: Admittedly I do not process bill disputes, so I don't have specific knowledge regarding the requirement for each of the fields that AT&T says it requires.[101]

Then on Ms. Pellerin's assertion that the USOC field was missing from CA's form, CA counsel asked her to review CA's actual dispute form in the record upon which the USOC that she had stated was missing did in fact appear:

> Q: In the comments field there do you see the letters PE1W1?
> A: Yes, I see that.
> Q: Is, is that most likely a USOC?
> A: Probably.[102]

[98] Hearing Transcript, page 000350 at line 4.
[99] *Id.* page 000351 at line 17.
[100] Hearing Transcript, page 000348 at line 21.
[101] *Id.*, page 000351 at line 13.
[102] *Id.*, page 000353 at line 3.

Thus, on the two issues that Ms. Pellerin stated made CA's dispute form deficient, she said that AT&T needs to know the total of its own bill but could not explain why AT&T needs to know the total amount of the bill that it sent, and then she said CA was missing a identification marker that was actually not missing at all. By her own admission, Ms. Pellerin's status as a billing disputes expert has been discredited and CA's form has not been shown to be deficient.

Under questioning from her own counsel, Ms. Pellerin admitted what the real issue is with CA's proposal:

> Q: Imagine if you will, that Communications Authority had a billing form of its own that did call for all of the information that AT&T needs but that is in a different form and format from the AT&T form. Would that work with AT&T's billing systems for CA, for Communications Authority to use that form?
> A: That would still require AT&T to populate the billing dispute system on a manual basis.
> Q: Why is that?
> A: The way AT&T's form is structured is very particular. And when we receive an email to the dispute mailbox, it goes automatically into the system that processes the dispute, and that system is looking for certain information is certain fields in a certain format. When it receives that, it processes it through untouched by human hands into the, into the system. If it's coming in in anything other than that precise format, it will kick out for a person to take their time to actually input the information into the billing dispute system. [103]

Pellerin also made another interesting comparison in her direct testimony:

> This is true of a credit card company vis-à-vis its customers, an airline vis-à-vis its customers, and a hospital with respect to its patients. The reason is obvious: if a credit card company's hundreds of thousands of customers could choose their own individualized means of communicating with the company, chaos would result. Likewise for the airline and the hospital. And for AT&T Florida with respect to its hundreds of wholesale customers"

[103] Hearing Transcript, page 000404 at line 10.

What a shame that such an eloquently told story should be entirely false. CA submits Exhibit 3 which is a screenshot of Capital One's website, showing that cardholders can optionally fill in an on-line dispute form or can mail in a letter to file a billing dispute. This is actually standard practice for most credit card companies and at-will business relationships.

It is not unreasonable for CA to expect that a human employee of AT&T be required to review CA's billing dispute, rather than simply forcing CA to mechanically enter its dispute into the same flawed AT&T billing system that billed incorrectly in the first place. AT&T is not required to enter its bills into CA's system in order to get paid; CA should not be required to enter its disputes into AT&T's system in order to have them processed just so that AT&T employees do not have to spend valuable time actually fixing their own mistakes.

Therefore, CA believes that the Commission should adopt its language for issues 22(a) and 22(b).

ISSUE 23: Should a party that disputes a bill be required to pay the disputed amount into an interest-bearing escrow account pending resolution of the dispute?

CA's Position on the Issue

No. CA objects to and has stricken AT&T's unreasonable requirement that all disputed charges must be paid into escrow by CA.

Discussion

AT&T's proposed escrow requirement is clearly unfair to CA, as it would permit AT&T to bill CA any amount that it chooses "in error" and CA, through no fault of its own, would automatically be in default of this agreement if it was unable to raise the funds that AT&T incorrectly billed and place them into escrow. Further, AT&T's proposed language does not require AT&T to compensate CA for its costs to raise and escrow the funds even if disputes are later resolved in CA's favor. Once again, AT&T seeks to require CA to follow the dispute resolution process but seeks to create a separate, one-sided process for itself instead of following the dispute resolution provision.

The escrow provision is duplicative and unnecessary. CA already agreed to AT&T's deposit requirement in the ICA, and that would provide adequate assurance of payment to AT&T if it timely invoked dispute resolution for unpaid bills, including use of the Commission's expedited dispute resolution process if it chooses. This would limit AT&T's exposure and obtain finality on any disputes in a timely manner if AT&T invoked remedies already available under this ICA.

In his rebuttal testimony, Ray testified, "If this escrow language were fair, it would require AT&T to reimburse the CLEC both for the cost of capital and administrative costs for escrow monies which end up refunded to the CLEC. However,

AT&T proposes none of that in its exceptions or anywhere else.[104] In her direct testimony, Pellerin testified "…if a carrier disputes AT&T Florida's bills month after month, the maximum deposit amount will not cover the amount of the dispute."[105]

Pellerin's statement is made in bad faith. AT&T is certainly aware that CA has proposed, from the beginning, that the Dispute Resolution section of this ICA should specifically permit the use by either party of the Commission's expedited process as envisioned in Rule 25-22.0365(5)(d). AT&T has objected to that, and it is an issue to be decided in this very arbitration (Issue 29).

If CA prevails on Issue 29, then the agreement will permit the parties to use the expedited process, and AT&T could invoke that process before the amount disputed by CA exceeded the deposit. Even if AT&T were to prevail on Issue 29, then AT&T would only be denied an expedited resolution to disputes because it deliberately denied itself access to that process. It is therefore disingenuous for AT&T to complain that it will not have access to swift dispute resolution when its own actions would be solely responsible for that being the case. It is unthinkable that, having denied itself access to swift dispute resolution, AT&T should then be entitled to also demand that CA raise and escrow funds to cover all disputed charges because AT&T denied itself the protection of the expedited Dispute Resolution process.

Finally, AT&T's escrow terms unfairly discriminate against CA. At hearing, CA counsel asked Pellerin:

[104] Ray Rebuttal, page 27 at line 4.
[105] Pellerin Direct, page 42 at line 22.

> Q: Okay. The current interconnection agreements that are rolling over in evergreen status, isn't it true that some of them have been in evergreen status for well over a decade?
> A: I don't know specifically. It wouldn't surprise me.[106]
> …
> Q: So in those, so in those existing ICAs, isn't it true that they didn't contain provisions for escrow or for choke trunks?
> A: I don't know about choke trunks. I do know that they do not contain escrow terms.[107]

Pellerin has confirmed that some CLECs are operating in Florida today without the escrow terms that AT&T seeks to force upon CA, and it wouldn't surprise her that this has been the case for over a decade. This unfairly discriminates against CA, since AT&T has had the opportunity to notice those evergreen agreements for expiration and negotiate new agreements with escrow language and has not done so. Thus, AT&T willingly continues those agreements without escrow, while attempting to force CA into the much more restrictive escrow terms.

Pellerin made several admissions on this issue at hearing:

> Q: And this is regarding escrow. I believe in several parts in the testimony it was admitted that AT&T's invoices to CLECs are not 100 percent accurate; is that true?
> A: Yes.
> Q: Is there any statutory or regulatory provision requiring CLECs to pay an ILEC disputed balances in an escrow agreement?
> A: I'm not aware of any law one way or the other.
> Q: Is there any law or regulation guaranteeing AT&T protection from the risk of nonpayment by its wholesale CLEC customers?
> A: The only thing I'm generally aware of would be an obligation to pay your bills.[108]
> …

[106] Hearing Transcript, page 000337 at line 17.
[107] *Id.*, page 000342 at line 2.
[108] *Id.*, page 000353 at line 15.

> Q: Is there any statutory or regulatory authority requiring a CLEC to bear escrow costs for billing mistakes that potentially were caused by AT&T?
> A: I'm not aware of any particular law regarding escrow one way or the other.[109]

Then, CA counsel asked Pellerin if AT&T would be willing to pay for its own mistakes as part of its proposed mandatory escrow requirement:

> Q: To fund an escrow account, it's going to—I wonder if—would AT&T be opposed to language that would require AT&T to cover the cost of raising the capital to get escrow money into the account if it was a –if it was found to be an AT&T billing error?
> A: Yes.[110]

Pellerin expanded on this testimony further when questioned by Staff:

> Q: If a CLEC escrowed disputed amounts and any associated late payment charges and has prevailed in the dispute, is the CLEC made whole by the release of those funds and any related interest?
> A: They may or may not be depending on their actual cost to establish the escrow account.
> Q: And what about account establishment fees? Should they be included in the amount remitted to the prevailing party?
> A: No, I don't believe so.[111]

Thus, Pellerin makes clear that AT&T intends for CA to bear all costs of raising funds to escrow, the cost of the escrow account itself, interest upon the funds borrowed to place into escrow, and administrative costs of performing the escrow even if AT&T is ultimately found to be at fault for the entire fiasco. AT&T proposes that it remain unaccountable and suffer no penalty at all after it has admitted that its own mistake caused the whole thing. To illustrate, CA would likely be borrowing funds for a large dispute issue, with a loan origination fee, perhaps other fees, and at an interest rate estimated at 20% given the short time that CA would have to obtain the funds. AT&T

[109] *Id.*, page 000358 at line 25.
[110] *Id.*, page 000359 at line 22.
[111] *Id.*, page 000386 at line 25.

proposes that it should have no liability for any of that even if CA prevails and that CA should be forced to pay all of that for AT&T's error.Pellerin further confirmed that she is not familiar with CLEC billing disputes at all when questioned by PSC staff at hearing:

> Q: And is it rare for a CLEC such as Communications Authority to have amounts in dispute?
> A: I don't know how common it is.[112]

This issue was squarely addressed by the Michigan Public Service Commission ("MPSC") in a recent interconnection agreement arbitration case filed by a group of CLECs against AT&T.[113] In that case, using similar logic and evidence presented in this case, the MPSC found an escrow provision to be unreasonable and struck down AT&T's proposed language:

> AT&T Michigan, seeking to guard against losses incurred when a CLEC goes bankrupt with disputed amounts still owing, proposed language that would require either party disputing a bill to deposit the disputed amount in an escrow account until the dispute is resolved. At that time, the disputed amount with interest could be dispersed to the prevailing party. The CLECs argued that adopting AT&T Michigan's proposal would be unreasonable due to the number and frequency of billing errors the incumbent makes and the complexity of the billings and underlying data.
>
> According to the CLECs, billing errors can reach millions of dollars. Moreover, AT&T Michigan sometimes sends backbills and rebills covering several months or even years, thus compounding the dollar value of the error. The CLECs argued that funding large escrow accounts even for short periods disrupts cash flow and removes the natural incentive for the incumbent to reduce billing errors and the time it takes to resolve disputes. In the CLECs' view, an escrow provision would create the

[112] *Id.*, page 000382 at line 8.
[113] In the matter of the petition of ACD TELECOM, INC., ARIALINK TELECOM, LLC, CYNERGYCOMM.NET, INC., DAYSTARR LLC, LUCRE, INC, MICHIGAN ACCESS, INC., OSIRUS COMMUNICATIONS, INC., SUPERIOR SPECTRUM TELEPHONE AND DATA, LLC, TC3 TELECOM, INC., and TELNET WORLDWIDE, INC. for arbitration of inter- connection rates, terms, conditions, and related arrangements with MICHIGAN BELL TELEPHONE COMPANY d/b/a AT&T MICHIGAN, Case No. U-16906, (February 15, 2012). (Hereinafter "MI U-16906").

potential for serious financial harm to them. They also noted that AT&T Michigan is owed late fees on disputed amounts if a dispute is resolved in its favor.

The arbitration panel found in favor of the CLECs on this issue, reasoning that AT&T Michigan had not demonstrated either that the potential for harm to the CLECs would be minimal or that the agreement provides insufficient alternatives to protect the incumbent from significant losses. The arbitration panel further noted that undisputed language in the interconnection agreement provides for cash deposits that are designed to protect the incumbent in the event that a CLEC's financial health or creditworthiness falls below established levels. Finally, the arbitration panel found that disputes could be resolved relatively quickly under the agreement's provisions for bringing a dispute to the Commission for resolution.

AT&T Michigan objects and argues that it sufficiently demonstrated the need for the proposed language in order to protect AT&T Michigan from losses it should not have to bear. It argues that the arbitration panel mistakenly believed AT&T Michigan had a burden to demonstrate that its proposed language would impose a minimal burden on the CLECs. It argues that, actually, the CLECs had the burden to demonstrate that the proposed language posed a substantial burden.

And, it argues, the CLECs failed to meet that burden. For example, AT&T Michigan argues, only one of the CLECs offered evidence concerning the frequency of billing errors, and that witness testified that most errors are not significant. Thus, AT&T Michigan argues, it could not be "a significant hardship [on the CLECs]. . . to escrow the erroneously billed amounts." AT&T Michigan objections, p. 8. Finally, AT&T Michigan argues, the sole CLEC presenting evidence on the issue would probably not need to escrow most of the claimed billing errors under the proposed language.

As to the other provisions in the interconnection agreement providing for late fees, AT&T Michigan argues that bankrupt companies are just as unable to pay late fees as the underlying disputed amounts. Thus, it argues, those provisions do not address the concern that AT&T Michigan has with losing money due to an intervening bankruptcy once the dispute has been resolved. For essentially the same reason, AT&T Michigan argues, the cash deposit provisions in the interconnection agreement also do not accomplish the purpose that the proposed escrow requirement would serve. It asserts that a deposit, when it is made, is generally limited to three months' average billings. AT&T Michigan argues that it suffers the greatest losses to CLECs that dispute and fail to pay their bills for a

year or two, not just three or four months. Thus, the deposits under those other provisions would protect AT&T Michigan for only a small fraction of the disputed amount.

Finally, AT&T Michigan argues, the availability of dispute resolution at the Commission does not minimize the risk that disputes will take one or two years to resolve. It states that Commission proceedings can be protracted, with the CLEC appealing adverse determinations to avoid the need to pay for a year or more. AT&T Michigan argues that the rationale used by the arbitration panel does not withstand scrutiny and should not be adopted.

The Commission agrees with the arbitration panel that AT&T Michigan's proposed language should not be adopted for this interconnection agreement. The testimony from Rick Riordan on behalf of the CLECs, suggests that AT&T Michigan has had difficulty with accurate billing. According to Mr. Riordan, there are mistakes every month and nearly all disputes are resolved against AT&T Michigan. Although many errors are not significant and would not require escrow payments, there are some that are very significant. Again, in this competitive market, the requirement that the CLEC fund an amount that it is likely to be found not owing imposes an unreasonable burden on the CLEC, because it impinges on critical cash flow. The Commission has previously observed the potential for escrow provisions to become overly onerous to the CLEC. *See*, the August 18, 2003 order in Case No. U-13758. The late charge provisions, although they do not protect against CLEC bankruptcy, do help prevent the CLEC from raising insubstantial or erroneous challenges to billing accuracy. Moreover, the Commission is not persuaded that the $15,000 threshold for escrowing sufficiently protects the CLECS from unnecessary diversion of needed funds. The total for multiple billing errors could easily surpass the threshold amount, given the frequency of billing disputes. The Commission concludes that without the proposed language in the agreement the proper incentives are in place to issue accurate bills, minimize errors, and speedily resolve disputes. The Commission therefore adopts the conclusion of the arbitration panel.

Therefore, CA believes that the Commission should adopt its language for issue 29(ii).

ISSUE 24(i): Should the ICA provide that the billing party may only send a discontinuance notice for unpaid undisputed charges?

CA's Position on the Issue

Yes. CA must have a right to not pay disputed charges, until conclusion of the dispute resolution process. AT&T should not be permitted to unilaterally cause potentially fatal harm to its competitor without due process.

Discussion

This is another example of AT&T seeking to provide itself with remedies other than the dispute resolution process in this agreement while denying CA the protections of due process. Since it is entitled to a two month service deposit from CA at all times, AT&T has not shown that it would suffer undue risk or exposure if it timely invoked dispute resolution in order to get finality when billing disputes were not resolved between the parties, including access to the Commission's expedited dispute resolution process. However, AT&T seeks to provide itself with unfair, one-sided remedies that would clearly be catastrophic to its much smaller competitor instead of AT&T complying with the same dispute resolution process which CA is forced to use to resolve disputes. This is not parity. AT&T can invoke Dispute Resolution at any time to resolve billing disputes, and does not need a separate remedy which would allow it to exterminate its competitor without oversight or due process instead of resolving disputes in the appropriate manner.

Therefore, CA believes that the Commission should adopt its language for issue 24(i).

ISSUE 24 (ii): Should the non-paying party have 15 or 30 calendar days from the date of a discontinuance notice to remit payment?

CA's Position on the Issue

30 days. AT&T has not shown that it incurs substantially higher risk by giving CA 30 days to raise funds to make payment to AT&T before disconnecting services.

If CA were to receive bills from AT&T of which it was previously unaware, or if a dispute resolution were resolved in AT&T's favor, CA may need time to secure funding to make payment to AT&T to prevent disconnection and 30 days is reasonable. AT&T would already be entitled to Late Payment Charges to compensate for this delay. If only 15 days were allowed and AT&T was permitted to disconnect before CA could raise funds, CA would then be out of business and almost certainly bankrupt. There is little chance that AT&T would ever be paid in that case, which makes AT&T's alleged rationale suspect.

Therefore, CA believes that the Commission should adopt its language for issue 24(ii).

ISSUE 25: Should the ICA obligate the billing party to provide itemized detail of each adjustment when crediting the billed party when a dispute is resolved in the billed party's favor?

CA's Position on the Issue

Yes. If AT&T is not required to reference a specific dispute for each credit given on CA's bill, CA will be unable to determine which disputes should be closed and which need to stay open. Given the volume of billing errors and disputes, the process would become unmanageable.

Discussion

There is no reason why AT&T should not or cannot identify the dispute when CA has prevailed and AT&T issues the resulting credits. CA rejects AT&T's assertion that this identification is impossible, and notes that AT&T requires far greater detail from CA to process billing disputes and does not deem its own requirements to be impossible to meet.

Pellerin testified in her direct testimony, "AT&T Florida will provide the associated claim number when processing billing dispute credits where its systems are capable of doing so. However, there may be instances where that is not possible, and AT&T Florida should not be contractually obligated to do the impossible."[114] Neither Pellerin nor AT&T Florida has made any showing of any instance where disclosure of the specific dispute being credited would be impossible, and CA disputes this allegation that such an instance could possibly exist. After all, could CA simply say it is "impossible" to understand AT&T's complicated billing, and just guess as to how much it should pay?

[114] Pellerin Direct, page 53 at line 17.

Could CA file a billing dispute, omitting the complicated information required by this ICA for billing disputes, simply citing "bill too high, need to knock off about 3200.00"? It's clear what AT&T's response to either of those would be. It is important to remember that by the time AT&T issues a credit, it has already made a billing error, CA has already had to spend time and resources to dispute the incorrect charge, and AT&T has then admitted that it made a billing error. Neither party proposes that CA should be compensated for the resources it had to expend solely due to AT&T's error. However, Pellerin asserts that after all that, AT&T should be excused from properly accounting for the resulting credit because that is somehow "impossible" although she declines to explain how that is impossible. Since AT&T would have already admitted its error, the least it should do is account for the credit issued to correct that error.

CA believes that the Commission should adopt its language to resolve issue 25. CA would also agree to the addition of a proviso stating "Unless otherwise agreed by the parties or ordered in a Dispute Resolution proceeding" so that the parties could waive this requirement upon mutual agreement to resolve a large class dispute. CA believes, however, that the proviso is unnecessary as the parties can obviously mutually agree to anything going forward in any case.

ISSUE 26: What is the appropriate time frame for a party to dispute a bill?

Resolved.

ISSUE 27: Should the ICA permit Communications Authority to dispute a class of related charges on a single dispute notice?

CA's Position on the Issue

Yes. CA should be entitled to dispute a class of charges in a single dispute notice because AT&T may bill for a single incorrect charge using hundreds or thousands of separate line items on a bill.

Discussion

As one example of this, if AT&T bills for local interconnection trunks which it is not entitled to bill for; it could bill for each separate trunk as one or more line items on each monthly bill. If CA were required to dispute each individual line item this could potentially amount to thousands of discreet disputes each month for the same issue; it would be a tremendous waste of time and resources for both parties (but mainly for CA) and there is no benefit to that approach. AT&T's incorrect billing would be the cause of the disputes in the first place, and AT&T has not shown how it would be harmed by CA's proposed language.

In her rebuttal testimony, Pellerin testified:

> Q: Mr. Ray notes that an ICA between Terra Nova and Verizon contains a provision similar to what CA proposes for its ICA with AT&T Florida (Ray Direct at p.28 lines 1-3). Does the Terra Nova-Verizon ICA have any relevance to this arbitration?
> A: No. AT&T Florida is not Verizon and an ICA between Verizon and a CLEC in Florida has nothing to do with AT&T Florida.[115]

[115] Pellerin Rebuttal, page 30 at line 1.

CA cited the fact that this language already exists in the Terra Nova/Verizon agreement in order to dispel AT&T's inevitable claims of "Don't make us do the impossible." If it is possible for Verizon, it is surely possible for AT&T. Once again, it is important to note that billing disputes are only necessary when AT&T has made a billing error. As it pertains to the billing dispute process, AT&T is the "cost causer" but it does not propose to compensate CA for all the work required to dispute AT&T's incorrect billing. If CA files disputes in bad faith, CA is already penalized with Late Payment Charges. It adds insult to injury to force CA to dedicate exponentially more manpower to create hundreds or thousands of identical disputes instead of one class dispute to fix AT&T's billing error.

Therefore, CA believes that the Commission should adopt its language for issue 27.

ISSUE 28(i): Should a party that disputes a bill be required to pay the disputed amount into an interest-bearing escrow account pending resolution of the dispute?

Resolved.

ISSUE 28(ii): Should the ICA reflect that Communications Authority must either pay to AT&T Florida or escrow disputed amounts related to resale services and UNEs within 29 days of the bill due date or waive its right to dispute the bill for those services?

Resolved.

ISSUE 29(i): Should the ICA permit a party to bring a complaint directly to the Commission, bypassing the dispute resolution provisions of the ICA?

CA's Position on the Issue

Yes. CA seeks to include specific language in the ICA permitting either party to seek formal or informal relief from the Commission at any time, including use of the Commission's Expedited Dispute Resolution process, for an alleged violation, whether or not it invokes the dispute resolution process in this Agreement.

Discussion

Although the parties would normally attempt informal dispute resolution first, certain disputes could be service-affecting and extremely detrimental to CA and may need to be resolved immediately without running out the clock on informal resolution between the parties. In such cases, AT&T would unfairly and unilaterally benefit if CA were prohibited from seeking resolution from the Commission while AT&T ran out the clock on an issue affecting CA's service or customers. CA rejects AT&Ts suggestion that this would "bypass the dispute resolution provisions of the ICA" because CA seeks to include this language in those provisions. CA also notes that if a party seeks to use the Commission's expedited Dispute Resolution process, the party must affirm that it has attempted informal resolution first. CA does not seek a waiver of that requirement here; it simply seeks to not have to wait while its business is potentially being destroyed and AT&T is not engaging in good faith discussions after CA has made the attempt to informally resolve the issue.

Therefore, CA believes that the Commission should adopt its language for issue 29(i).

ISSUE 29(ii): Should the ICA permit a party to seek relief from the Commission for an alleged violation of law or regulation governing a subject that is covered by the ICA?

CA's Position on the Issue

Yes. CA believes that the Commission is the most appropriate forum for disputes to be heard, because only the Commission has the subject matter expertise to fully understand technical details which may be at issue between the parties.

Analysis

Rule 25-22.0365(5)(d) of the Florida Administrative Code states that a request for expedited proceeding must include: "A statement that the complainant company attempted to resolve the dispute informally and the dispute is not *otherwise* governed by dispute resolution provisions contained in the parties' relevant interconnection agreement." (italics added) AT&T's position seems to ignore the presence of the word "otherwise" to incorrectly state that an ICA's Dispute Resolution clause is mutually exclusive to use of the Commission's expedited Dispute Resolution process. However, the plain reading of the rule clearly shows that the expedited process is only barred if the ICA requires some other process for Dispute Resolution. This is why CA sees to clarify in this ICA that the Commission should be the deciding authority for all disputes between the parties, including both parties having access to the expedited proceeding as they see fit.

In Ray's Direct Testimony, he testified,

> …there are a number of actions that AT&T might take using its monopoly power which could cause severe harm to CA. CA may not have the luxury of invoking Dispute Resolution while AT&T runs out the clock,

> because CA and its customers could be suffering severe harm due to AT&T's inactions. I have had this experience several times in my interactions with AT&T on behalf of AstroTel Inc. and Terra Nova Telecom Inc. and have had to seek help from the Commission staff to get problems resolved. Since the Commission's new expedited Dispute Resolution process specifically states that it cannot be invoked if the ICA requires some other process first, CA seeks to make clear that both parties have the right to seek relief from the Commission when they deem necessary under this agreement.[116]

In addition to Mr. Ray's testimony, it should be obvious that there are situations that could arise where AT&T is doing something that could threaten the very existence of CA, such as terminating a critical service like Local Interconnection. In a case like that, of course CA would first attempt informal resolution with AT&T but CA must retain the ability to seek help from the Commission (formally or informally) if it could not get AT&T to engage on the issue while its customers suffer from AT&T's actions. AT&T has not refuted Mr. Ray's claims, nor provided any reason why the parties should not be able to seek relief from the Commission when necessary. AT&T has not shown that it would be harmed in any way if CA's language were to be adopted, and has not cited any legal or regulatory authority for its position on this issue. Therefore, CA believes that the Commission should adopt its language for issue 29(ii).

[116] Ray Direct, page 30 at line 10.

ISSUE 30(i): Should the joint and several liability terms be reciprocal?

CA's Position on the Issue

Yes. CA has revised AT&T's proposed ICA language to provide parity between the parties. CA has also removed language which would illegally bind non-parties to this agreement, clarifying that each party is responsible to the other for the actions of any other party acting on its behalf.

Discussion

In response to Staff's first set of interrogatories, AT&T was asked "Please list any Florida Public Service Commission orders or other state Public Utility Commission orders where CLECs under similar agreements were held jointly and severally liable for CLEC obligations under the agreement." Pellerin provided the response, "AT&T Florida knows of no order of the Florida Public Service Commission or any other state commission that addressed the questions whether CLECs were subject to joint and/or several liability under an interconnection agreement." Thus, AT&T has failed to state any basis upon which it should be entitled to this unreasonable provision.

If any person or small company desired to perform a service for CA, such as placing orders in AT&T's systems on CA's behalf, it would never agree to do so if it suddenly also became liable for all of CA's obligations under this ICA. It is CA who is executing the ICA. It is CA who is required to have the requisite insurance coverages under this ICA. It is CA who is ultimately responsible for what it, or its agent, does. CA's proposed language makes it solely responsible for its actions and the actions of its agents. This is entirely appropriate.

AT&T has proposed no language that would make its own affiliates or employees jointly liable under this ICA, even though every witness who has testified for AT&T in this proceeding has been an employee of a different AT&T affiliate and not an employee of AT&T Florida. Clearly, AT&T uses its affiliates and employees of those affiliates for various tasks in the conduct of its obligations under this ICA. If AT&T's proposal were non-discriminatory, it would make those affiliates and employees liable for AT&T Florida's actions in the same manner it proposes for CA.

CA also believes AT&T's language is unlawful under basic common law contracting principles. The language purports to bind a third-party to an agreement (the ICA) to which the third-party has not agreed to be bound. Therefore, CA believes that the Commission should approve its proposed language for this issue.

ISSUE 30(ii): CA has revised AT&T's language to provide parity between the parties. CA has also removed language which would illegally bind non-parties to this agreement, clarifying that each party is responsible to the other for the actions of any other party acting on its behalf.

Resolved.

ISSUE 31: Does AT&T Florida have the right to reuse network elements or resold services facilities utilized to provide service solely to Communications Authority's customer subsequent to disconnection by Communications Authority's customer without a disconnection order by Communications Authority?

Resolved.

ISSUE 32: Shall the purchasing party be permitted to not pay taxes because of a failure by the providing party to include taxes on an invoice or to state a tax separately on such invoice?

CA's Position on the Issue

Yes. Taxes must be billed as separate line items so CA may audit its invoices.

Discussion

In her direct testimony, Pellerin testified, "However, it is possible that taxes could be omitted if, for example, there was a new local tax that applied to the services AT&T Florida provides to CA, but AT&T Florida's billing system had not yet been updated to reflect the new tax. In that case, the new tax would not be listed on CA's bill."[117] CA believes this is a false premise. First, taxing authorities provide ample notice for billing system changes to be made before taxes become effective. AT&T would be required to itemize the tax on its retail bills, and so its billing system would have to be modified for that in order to comply with the retail mandate. Second, a new tax would qualify as a change of law. AT&T could seek an amendment and CA would be compelled to negotiate one if this were truly the case.

[117] Pellerin Direct, page 65 at line 13.

Finally, CLECs are generally exempt from taxes on ILEC bills because CLECs collect from their own subscribers and remit directly to the taxing authorities. Many CLECs also provide wholesale services to other CLECs, where there are two CLECs between AT&T and the end user and both are tax-exempt. If AT&T were not required to itemizes taxes on its bills, CA would be unable to claim exemption from or dispute those taxes when they were inappropriate. This could severely prejudice CA.

In his direct testimony, Ray testified, "Under the agreed billing dispute process, CA would be unable to dispute improperly billed taxes if AT&T did not itemize those taxes."[118] AT&T has not refuted this claim, and has provided no reasoning why taxes cannot or should not be itemized.

It would be clearly unfair to CA for it to be prohibited from disputing taxes solely because AT&T did not itemize them on the bill. Therefore, CA believes the Commission should adopt its position on this issue.

[118] Ray Direct, page 32 at line 13.

ISSUE 33(a): Should the purchasing party be excused from paying a Tax to the providing party that the purchasing party would otherwise be obligated to pay if the purchasing party pays the Tax directly to the Governmental Authority?

CA's Position on Issue

Yes.

ISSUE 33(b): If Communications Authority has both resale customers and facilities-based customers, should Communications Authority be required to use AT&T Florida as a clearinghouse for 911 surcharges with respect to resale lines?

CA's Position on Issue

No. Because CA will be a facilities-based AND a Resale CLEC, its systems will report its 911 subscriber data in the aggregate to the Florida 911 Board using the Board's monthly form separated by county, and CA will pay the surcharges based upon that data.

Discussion

AT&T does not provide any way for CA to determine the county for each resale line for which AT&T bills the E911 surcharge on its bill. Especially since 911 surcharges are capped per end-user location regardless of how many lines are resale, facilities-based or VoIP, it is impossible for CA to deduct the resale lines from its monthly filings and payments to the Florida 911 Board which are county-specific. AT&T's language would effectively require CA to double-pay for its E911 surcharges each month.

In his direct testimony, McPhee testified,

> Because the Parties have agreed on language in GT&C section 37.1 that clearly delineates each Party's responsibilities with respect to taxes, and section 37.1 says '…the providing Party shall pay or remit such Tax to the

> respective Governmental Authority…' …consequently, CA and AT&T Florida have agreed that AT&T Florida is to pay the taxes to the governmental authority and pass the charges through to CA. CA's proposed language for sections 37.3 and 37.4 would nullify what the Parties have already agreed upon, and so is an improper attempt to renege on that agreement.[119]

In this proceeding, AT&T started by refusing to negotiate with CA. At no time did AT&T ever permit CA to speak to a decision maker to negotiate any aspect of this agreement during the "negotiation phase." Thus, it is disingenuous for AT&T to complain incessantly about CA attempting to subvert "agreed language."

McPhee is essentially saying that since AT&T's proposed language conflicts with CA's proposed language, CA's proposed language is "an improper attempt to renege on that agreement" because without CA's language AT&T's language is presumed agreed to. Or in the alternative, if CA failed to place its language in the section of the agreement that AT&T would prefer, then AT&T's language is agreed because it is in the section that AT&T prefers and cannot be modified by another section of the agreement where CA's language appears.

That is absurd. This issue was properly raised from the very beginning, and AT&T refused to discuss it with CA. It is AT&T, not CA, who ignored its duty to negotiate in good faith. That's why we're arbitrating it now.

In an attempt to cast CA as incompetent, McPhee testified in his direct testimony, "A telecommunications company should have the technical and managerial resources in place to know who it is serving and where its customers reside."[120] However, Mr. McPhee seems unaware of AT&T's own indemnification form (exhibit 01850) which

[119] McPhee Direct Testimony, page 8 at line 16. (Hereinafter "McPhee Direct")
[120] *Id.* page 12 at line 14.

clearly provides a mechanism for CLECs to become exempt from E911 taxes from AT&T for resale service. The existence of this form seems to negate Mr. McPhee's testimony that the exemption CA seeks is improper and unheard of. Why would there be a specific AT&T exemption form for it otherwise?

The existence of the form also means that AT&T is attempting to discriminate against CA by refusing to permit CA to be exempt from the resale E911 taxes, while other wholesale AT&T customers are able to become exempt from those taxes. In his rebuttal testimony, Mr. McPhee goes even further with his discrimination proposal. In spite of it already being standard practice for AT&T Florida to exempt CLECs from Communications Services Taxes, and in spite of the agreed language which already provides for CA to be exempt from CST taxes if it provides an exemption form from the state, Mr. McPhee suggests that AT&T Florida should inject itself into the middle of all taxes for resale service provided to CA.[121] Mr. McPhee then suggests that CA's proposal would be patently unreasonable because AT&T would have to revamp its entire billing system to exempt CA from taxes.[122] However, most CLECs in Florida are already exempt from taxes and AT&T's billing systems have no problem excluding taxes for them. This takes AT&T's discriminatory treatment of CA to a whole new level.

CA urges the Commission to adopt its language for Issue 33(b).

[121] McPhee Rebuttal Testimony, page 2 at line 12.
[122] *Id.* at line 16.

ISSUE 34: Should Communications Authority be required to interconnect with AT&T Florida's E911 Selective Router?

CA's Position on the Issue

No. There are ample competitors for CLECs and VoIP companies to choose from in the 911 Emergency Services marketplace with at least four large competitors to AT&T for statewide 911 service in Florida. Maintaining trunks to AT&T selective routers is unreasonably costly, inefficient and unnecessary.

Discussion

AT&T's 911 competitors provide modern, superior features and functionality compared to AT&T's antiquated, decades-old 911 infrastructure which has not changed or been significantly updated in over a decade. While acknowledging that it has a duty to provide reliable 911 service to its subscribers, CA objects to AT&T's monopolistic position that it is entitled to be paid for its inferior 911 services even when CA does not need or intend to use those services. Except for ILEC resale service which is not at issue in this provision, regulations place the burden on CA, not AT&T, to provide reliable 911 service to CA's subscribers. AT&T has not shown any reason why CA should be required to purchase inferior 911 services from AT&T instead of a superior service from an AT&T competitor.

AT&T has admitted in testimony that it has no regulatory authority to require CLECs to use its 911 services and AT&T has also admitted that it is not aware of any county 911 operator, including those who have selected AT&T as its 911 vendor, which compels CLECs to use AT&T's 911 service. AT&T has cited vague references to public safety to justify its position on this issue, but has failed to provide any evidence that the

public safety is in danger as a result of a CLEC choosing a competitive provider for 911 service.

In Staff's deposition of McPhee, he was asked "In AT&T Florida's position statement, it asserts that for those PSAPs that are served by AT&T Florida's selective routers, all 911 calls must be routed through AT&T Florida's E911 Selective Routers. In instances where a PSAP or a county chooses AT&T Florida to be its provider of 911 services, is there a contract made between AT&T Florida and that PSAP or county?" McPhee replied, "I believe that's true, yes." McPhee was then asked "And does that contract provide that AT&T Florida is the exclusive provider of E911 service to that PSAP or county?" to which McPhee replied "I don't know that." McPhee was also asked "Would that contract address a scenario wherein a CLEC wants to use another E911 provider?" to which McPhee replied "I don't believe it would. It would just—it would address the terms between AT&T and that PSAP for the services that the PSAP is purchasing from AT&T."

At hearing, McPhee was asked by CA counsel,

> Q: Are there any government 911 system operators in Florida that require CLECs to utilize AT&T's 911 service?"
> A: I don't know.[123]

Thus, AT&T has been unable to cite any regulatory or legal requirement that supports its proposal to force CA to purchase 911 service from AT&T for CA's own network and subscribers.

[123] Hearing Transcript, page 000472 at line 10.

Ray testified in his rebuttal testimony,

> AT&T chooses to ignore the fact that the most popular competitor – Intrado – is also who AT&T Florida has contracted out its own 911 database and call routing service to. When a CLEC sends a 911 call to AT&T, a lookup is performed against the Intrado ALI database before the call is sent to a dispatcher even if the call is carried by AT&T circuits. Thus, the same 'middleman' is being used whether or not the CLEC uses AT&T or sends 911 calls directly to Intrado for completion.[124]

AT&T has not refuted this testimony, and did not cross-examine Mr. Ray on this issue. Moreover, Therefore, CA has established that Mr. McPhee's assertion that inserting the "middleman" somehow compromises the process is false, since AT&T inserts the same "middleman" into its own 911 call flow for itself and for CLECs. For example, the county of St. Lucie has chosen to use Intrado as its 911 provider instead of AT&T. AT&T permits CLECs to route calls to its Selective Router for that county, even though the county has moved to Intrado. In that case, AT&T is acting as a "middleman" and seems to have no safety concerns when AT&T is being paid for it.

Ray also testified in his rebuttal testimony (page 35 @ 22) about problems that he has had firsthand with AT&T's 911 service for CLEC subscribers. AT&T has not refuted this claim, and did not cross-examine Mr. Ray on this issue. Thus, AT&T's claim that it provides superior 911 service is shown to be false.

In the arbitration panel's decision for Michigan U-16906, after reviewing filings by AT&T Michigan and the Joint CLEC petitioners making the same arguments as in this arbitration, the panel held for the CLECs very simply stating:

> The Panel finds for the CLECs on this issue. There is no prohibition on the use of a third party 911 provider in the Emergency 911 Service Enabling

[124] Ray Rebuttal Testimony, page 35 at line 13.

> Act and AT&T does not cite any other legal authority in support of its position. As stated by the CLECs, a third party 911 provider (Intrado) is already in use in some exchanges in Michigan, and to the best of the Panel's knowledge there have been no problems with this arrangement reported to the Commission. The Panel is aware of how serious a telecommunications provider's 911 obligations are and how essential this service is to its customers. As such, the Panel reminds the CLECs that they are still required to comply with all state and federal 911 laws and regulations, as stated in section 7.1 of the 911 appendix, regardless of the method used to deliver traffic to the selective router.[125]

As such, AT&T has already lost this issue using the same tired arguments. The Commission should follow the Michigan PSC's logic and choose CA's proposed language.

[125] The arbitration panel's full order can be found here: http://efile.mpsc.state.mi.us/efile/docs/16906/0019.pdf

ISSUE 35: Should the definition of "Entrance Facilities" exclude interconnection arrangements where the POI is within an AT&T Florida serving wire center and Communications Authority provides its own transport on its side of that POI?

CA's Position on Issue

CA believes that as the party that initially paid for facilities which connect its collocation in an AT&T central office to AT&T's Main Distribution Frame, and AT&T incurred no costs for them, AT&T has no right to charge CA for the use of those (or any) facilities for local interconnection.

Discussion

This issue has now been reduced to a simple question, which is "If CA has paid for materials and labor for the installation of facilities may AT&T charge any monthly recurring charge for those 'facilities' when they are used for Local Interconnection?" CA says, "No." Ray testified that AT&T has attempted to do just this with Terra Nova, alternatively calling the charge "entrance facility" or "customer channel."[126] AT&T has not stated why it feels entitled to charge for facilities that it does not own and had no expense in constructing. AT&T's policy on collocation already requires all CLECs to install and pay for their own cross-connects from the CLEC collocation to AT&T's MDF, so in no case would those facilities ever be AT&T's to charge for.

Pellerin takes another swing at CA in her rebuttal testimony citing "Other Florida CLECs pay AT&T Florida's interconnection trunk charges pursuant to their ICAs," but she does not name any other CLECs nor cite the specific alleged ICA provisions.[127] This

[126] Ray Rebuttal.
[127] Pellerin Rebuttal, at page 29, footnote 11.

raises a point that CA believes is critical. In the Terra Nova dispute which has given rise to this issue, CA has presented evidence that AT&T Florida is billing USOC PE1W1 for local interconnection trunks. This USOC is not found in Terra Nova's ICA, which Terra Nova has pointed out to AT&T. AT&T's response to that was "DENIED-REFER TO EXHIBITE A FOR THE PE1W1 WHICH IS NOT PART OF YOUR ICA AND WON'T FALL UNDER THE BILL AND KEEP…THE PE2E2 USOC IS A PHYSICAL EXPANDED INTERCONNECTION SERVICE BILLED AS SWITCHED ACCESS ON A DS1 BECAUSE THE CFA THAT THIS CKT IS RIDING IS A PHYISCAL COLLO T1TIE."[128]

Further, Terra Nova has pointed out to AT&T that its ICA not only does not include the PE1W1 USOC in its ICA, but the ICA contains language specifically forbidding this charge, "When a cross connect is made in the provisioning of Local Interconnection facilities/services, the providing Party will not charge the other Party a Local Channel Facility rate for such cross connect."[129] This is exactly what AT&T is doing, in spite of the ICA's clear prohibition. The fact that AT&T now calls it a "customer channel" instead of the ICA term "local channel" does not negate the fact that it is the same thing, but illustrates what AT&T could potentially do to CA if CA's clear language prohibiting such charges for non-AT&T-owned facilities is not adopted.

Staff questioned Pellerin on this issue at hearing:

> Q: In his deposition, Mr. Ray stated that AT&T Florida is double-dipping by requiring the CLEC to pay to have the facilities between the collocation and the main distribution frame constructed and then charging the CLEC a monthly fee for using the cable that the CLEC had installed. Does AT&T

[128] *See*, Ray Deposition, Exhibit 2 at page 2.
[129] *Id.* at page 12.

> Florida propose to charge a monthly local channel charge for this link between Communications Authority's collocation space and the main distribution frame?
> A:…And so when they're collocated, there has to be something that gets from their collocation space to the actual point of interconnection on AT&T's network. And Communications Authority is responsible for that facility, but it's not an entrance facility.
> Q: Thank you. So is there a charge associated though with the link between the collocation space and the distribution frame?
> A: I would say probably.
> Q: Do you believe that this charge would be located in the proposed pricing schedule?
> A: That I don't know.
> Q: And this is part of your exhibit, I think, PHP-1?
> A: The pricing—yes, the pricing sheet is part of that… whether that's charged—whether there is a specific rate for that in the interconnection agreement or whether it's in AT&T's tariff, that I'm not sure of, but it's not an entrance facility.
> Q: Ok. I'd like to go ahead and look at the pricing sheets and see if we can't find that charge. And if you could find that charge for staff.
> A: I—it might be in the collocation section, which I'm not familiar with. That I don't know. There's nothing in the local interconnection section that addresses that that I could find.
> Q: Can you tell me if Ray is correct in stating that Communications Authority has to contract out to a third party vendor to install the facility and then pay a monthly charge to AT&T for it?
> A: Well, Communications Authority is not in business yet, so they don't have anything at this time.
> Q: But would they?
> A: I don't, I don't know how they would—whether they would do that or not.[130]

Thus, Pellerin clearly is unfamiliar with who pays for what in a collocation related to interconnection facilities and also where various pricing elements are within her own pricing exhibit and what they mean. How could CA possibly be expected to accept AT&T's ambiguous language without CA's proposed clarifying additions when even AT&T's expert cannot explain AT&T's document or policy?

[130] Hearing Transcript, page 000390 at line 15.

Neinast testified in his direct testimony:

> Because the POI is on the AT&T Florida network, as the FCC's rule requires, CA must bear the cost of getting to that cross-connect equipment depicted in Figure 1-the cost of the cable running from the CA equipment in the collocation space to the AT&T Florida cross-connect equipment. If the POI were in the CA collocation space, as CA proposes, then AT&T Florida would have to bear the cost of the cable between that space and the AT&T Florida cross-connect equipment.[131]

Neinast's testimony makes crystal clear that AT&T is aware that the cross-connect cable between the CLEC collocation and the AT&T Main Distribution frame (which the CLEC was required to install at its own expense) is what AT&T seeks to charge for in connection with Local Interconnection. It has already been established that facilities connecting a CLEC collocation to AT&T's Main Distribution Frame must be installed by an AT&T AIS and paid for by the CLEC and not by AT&T.

This issue likely could have been resolved in direct negotiations if AT&T had negotiated in good faith. However, it remains unresolved because CA was unable to speak with anyone at AT&T knowledgeable on the issue during negotiations. After much discussion on this issue, CA continues to believe that it is entitled to relief similar to that found in the Terra Nova ICA, but agrees that its original proposed ICA language may not best capture the issue. CA instead proposes to replace its originally proposed language: ***"Entrance Facilities do not apply to interconnection arrangements where the mutually-agreed Point of Interconnection ("POI") is within an AT&T-21STATE Serving Wire Center, and CA provides its own transport on its side of that POI."*** and that the Commission should instead adopt replacement language stating:

[131] Neinast Direct Testimony, page 7 at line 7.

"When CA is collocated in an AT&T Florida Central Office which has been designated as the POI, neither party shall charge the other for any facilities or trunks related to local interconnection arrangements."

ISSUE 36: Should the network interconnection architecture plan section of the ICA provide that Communications Authority may lease TELRIC-priced facilities to link one POI to another?

CA Position on Issue

Yes. If CA has an existing POI at an AT&T Tandem and AT&T requires CA to establish a new, secondary POI at another location due to excessive local interconnection traffic, CA should be entitled to lease AT&T dedicated interoffice transport between POIs at TELRIC prices.

Analysis

CA had hoped to resolve this dispute with AT&T but has not received any cooperation. CA believes that this section in dispute which requires CA to establish a secondary POI within a single LATA is not consistent with the FCC's single-point-of-interconnection requirement, and that AT&T's language could be used later to require CA to establish a secondary POI where it would be unable to obtain reasonably-priced transport circuits due to impairment. This provision is desired by CA to establish clarity that the interoffice transport in such a case may be purchased by CA at TELRIC rates and need not require special access circuits for local interconnection.

There is a high likelihood that the two POIs would be located where AT&T has placed high-traffic Access Tandems. Those high-traffic Access Tandems are likely to be in Tier 1 Wire Centers, where UNE transport is likely to be impaired. Since the parties cannot agree upon terms for TELRIC-based transport to the secondary POI, CA believes that the Commission should strike both parties' language in their entirety, such that CA is

not required to establish a secondary POI and AT&T has no specific obligation to provide TELRIC connectivity to one if CA elects to establish a secondary POI on its own.

ISSUE 37: Should Communications Authority be solely responsible for the facilities that carry Communications Authority's OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups?

CA's Position on the Issue

No. CA believes that it is well established that each party is responsible only for facilities and costs on its side of the POI for local interconnection, which includes 911, choke trunks, and meet point trunks.

Discussion

AT&T's language seems to be an attempt to conflate the meanings of local interconnection and ancillary services to create additional revenue opportunities for AT&T and also to place the entire burden of local interconnection cost on CA, which conflicts with the Act's parity requirements. It is also inappropriate for AT&T to characterize Mass Calling/choke trunks as Ancillary Services and not Local Interconnection when AT&T is attempting to require CA to purchase Mass Calling as part of any Local Interconnection. If CA were not required to purchase Mass Calling "choke trunks," and 911 and meet point trunks were properly classified as Local Interconnection and removed from this provision, then CA would agree with the rest of AT&T's proposed language here.

In Staff's first set of interrogatories, AT&T was asked "38. Does AT&T Florida's proposed language in the decision point list mean that CA is solely responsible for the facilities that carry CA's OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups that extend beyond CA's side of the POI?" Pellerin responded, "Yes…These are not local interconnection facilities…these trunk groups carry ancillary services, separate

and apart from the local interconnection trunks. The POI is not the demarcation between the parties' networks for ancillary services."

CA notes that Pellerin's view violates the FCC's single point of interconnection rule[132] because AT&T is both attempting to require purchase of 911 trunks and HVCI trunks and also claiming that they are not delivered to the agreed POI. This would obviously require CA to interconnect at more than one point per LATA.

Further, in cross examination, Neinast's testimony contradicted several points in Pellerin's testimony. At hearing, CA counsel questioned Neinast on this issue:

> Q: And the ICA also requires one single POI per LATA, is that correct?
> A: That's correct. That's correct.
> Q: Okay. If CA was required to establish choke trunks to different end offices, wouldn't that essentially be additional points of interconnection?
> A: That kind of goes hand in hand with what we were talking about earlier. I think traditionally, yes, it would be because it would be an ancillary service. But the question you had asked earlier was could it be part of the local interconnection trunks and, yes, it could be. And then there could be a handoff at that POI that could be arranged in that manner.[133]

Although he implied that this was something to be negotiated, CA objects to that characterization because Local Interconnection is not a subjective term to be negotiated. This testimony directly conflicts with Pellerin's testimony above both in characterization of the trunks as local interconnection and also in whether or not they could be exchanged at the POI. Mr. Neinast's testimony also conflicts with AT&T's proposed language

[132] "Currently, under section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA." Connect America Fund et al.; WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (USF/ICC Transformation Order and/or FNPRM) aff'd sub nom., In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014) at par. 1316. *See*, https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf

[133] Hearing Transcript, page 000520 at line 19.

which makes clear that choke trunks would be ancillary and not local interconnection under its language, with CA responsible for paying for facilities on AT&T's side of the POI unlike local interconnection.

Also in response to Staff interrogatories, AT&T was asked in #39 about the industry standard practice for facilities carrying OS/DA, E911, Mass Calling and Meet Point Trunk Groups. In response, Pellerin stated in support of AT&T's position that AT&T's ICAs executed in the past 6 years have all contained AT&T's preferred language. However, CA points out that no ICAs have been arbitrated in Florida in the past 6 years, so of course the agreements that AT&T has cited contain its preferred language because there was no proceeding in which that language could have been contested. However, Pellerin goes on to state that "Earlier vintage ICAs, including relatively recent adoptions of earlier ICAs, do not contain specific language addressing the financial responsibility for these facilities." Ms. Pellerin fails to state whether or not, under those legacy agreements, CLECs were forced to pay non-TELRIC pricing for such facilities. Ray has testified that he is personally aware of two CLECs with such legacy agreements who were not charged in such a manner.[134] It seems clear that, since AT&T has admitted that both older ICAs and newer adopted ICAs contain CA's language, implementing AT&T's language would be discriminatory to CA by imposing substantial non-cost-based charges upon CA which are not imposed upon other CLECs, even while AT&T also seeks to require CA to purchase HVCI and E911 trunks that CA does not want or need which would be subject to those charges.

[134] Ray Rebuttal.

Finally, Pellerin and Neinast offered conflicting testimony on this subject. Pellerin stated in her direct testimony (page 76 @ 22) "To the extent that AT&T prevails on Issue 40 and CA establishes HVCI trunk groups, it is appropriate for CA to be solely responsible for the facilities that carry its HVCI traffic to the designed HVCI access tandem in each serving area." However, Neinast testified under cross examination that HVCI trunks "can be done as local interconnection." These positions are conflicting; either HVCI trunks are local interconnection or they're not. CA agrees with Neinast that they are local interconnection.

CA believes that the Commission should approve its language, which makes clear that if ordered, choke trunks, 911 trunks and third party trunks are local interconnection and that CA's obligation for facilities extends only on its side of the POI, and that AT&T is responsible for its own costs on its side of the POI as is the case for other CLECs.

ISSUE 38: May Communications Authority designate its collocation as the POI?

CA Position on Issue

Yes. CA believes that it is clear that the Telecom Act of 1996 intended for each party to bear its own costs on its side of the POI, and that AT&T must interconnect at any point proposed by a CLEC or prove that the CLEC-proposed POI is technically unfeasible

Discussion

For decades, ILECs including BellSouth have taken the position that an ILEC Central Office is the POI, and not a specific room within that Central Office. AT&T has recently begun to use language such as its proposed language here to attempt to subvert that concept and to create a revenue opportunity for AT&T at the expense of CLECs. Mr. Ray has described in testimony situations where parties to an ICA agree that the POI is at a AT&T Central Office, the CLEC orders, pays for, and obtains a collocation in that Central Office, and then AT&T claims that the POI is actually in some other area of the building and that the CLEC must pay AT&T for circuits between the alleged POI room and the CLEC's collocation in the same building.[135] This does not seem to be in good faith or in keeping with the Act's intentions, so CA seeks to revise AT&T's proposed language to correct that imbalance.

It is worthy of note that CA is not permitted to present interconnection circuits to AT&T anywhere else in the Central Office other than a collocation. AT&T's language would make it impossible for CA or any CLEC to actually meet AT&T at the POI, and AT&T would be entitled to charge for intra-building circuits in every single case to

[135] Ray Rebuttal.

connect every CLEC to the POI in each Central Office, even when the CLEC has already borne the cost of transport and collocation to meet at the POI. AT&T stated in its response to CA's discovery that it is aware of no legal or regulatory decision which supports its position[136] while CA has cited numerous examples of BellSouth local interconnections where intra-building circuits were not charged for and also cited other ILECs who have never taken this position and tried to charge for intra-building circuits for local interconnection.[137]

CA argues that federal regulations support its position. 47 CFR §51.305 "Interconnection" states "(e) An incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible." AT&T has not proven to the Commission in this proceeding that interconnecting at CA's collocation is not technically feasible. 47 CFR §51.321 goes on to require methods for obtaining interconnection and access to unbundled elements under section 251 of the Act:

> …an incumbent LEC shall provide, on terms and conditions that are just, reasonable and non-discriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon request by a telecommunications carrier. (b) Technically feasible methods of obtaining interconnection or access to unbundled network elements include but are not limited to: (1) Physical collocation and virtual collocation at the premises of an incumbent LEC" and then goes on to state "A previously successful method of obtaining interconnection or access to unbundled interconnection or access to unbundled network elements at a particular premises or point on any incumbent LEC's network is substantial evidence that such method is technically feasible.

[136] AT&T Response to CA First Set of Interrogatories.
[137] Ray Rebuttal.

Thus, 47 CFR 51.321 specifically says that a physical collocation is a technically feasible POI contrary to AT&T's assertion that CLEC collocations in an AT&T building are not on AT&T's network. Further, CA has stated that it intends to use cageless collocation. 47 CFR §51.323(k)(2) states "Cageless collocation…An incumbent LEC may not require competitors to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible." AT&T has not proven or alleged that direction connection to its network from a collocation is not technically feasible.

AT&T has not shown how it will be harmed by CA being permitted to designate its collocation as the POI. The idea that a collocation inside AT&T's building is not on its network is obviously absurd. Whenever AT&T determines what network facilities it has at a given address, it does not look to see which room they are in. Either an address is on the network or it is not. This issue is just one more opportunity that AT&T has taken to attempt to squeeze revenue out of its CLEC competitors, who have already heavily invested to connect their networks into AT&T's central office in the first place and still must also pay monthly rent to AT&T for the collocation. CA urges the Commission to adopt its language, that CA can designate its collocation as the Point of Interconnection.

ISSUE 39(a): Should the ICA state that Communications Authority may use a third party tandem provider to exchange traffic with third party carriers?

Resolved.

ISSUE 39b: Should the ICA provide that either party may designate a third party tandem as the Local Homing Tandem for its terminating traffic between the parties' switches that are both connected to that tandem?

Resolved.

ISSUE 40: Should the ICA obligate Communications Authority to establish a dedicated trunk group to carry mass calling traffic?

CA's Position on the Issue

No. Through this provision, AT&T seeks to force CA to purchase unnecessary services from AT&T in order to obtain local interconnection. Mass calling trunk groups are simply not necessary in a modern SS7 telecommunications network.

Discussion

In practice, many CLECs today do not use HVCI/mass calling trunks, including several that Mr. Ray has testified that he is personally familiar with in Florida. This provision is anticompetitive because it requires the purchase by CA of useless trunks from AT&T. It is also discriminatory, because this requirement is not imposed uniformly by AT&T upon CLECs and also because AT&T's proposed language does not also require AT&T to purchase HVCI/mass calling trunks from CA in the other direction. CA should have total control of which trunks it will order to interconnect its own switches to others. While AT&T has cited in support of its position three network failures which it claims would have been prevented by choke trunks, none of those examples involved CLECs and none of those examples were in Florida. AT&T responded to CA's discovery and stated that it is aware of no legal or regulatory decision that supports its position[138], while CA has provided examples of several currently in-force ICAs in Florida between AT&T and CLECs which do not require HVCI/mass calling trunks to be purchased.[139]

[138] CA Response to AT&T Second Set of Interrogatories.
[139] Ray Rebuttal.

In Neinast's deposition, he was asked, "Are you aware of any mass calling events in Florida within the past ten years?" to which he replied "I'm not aware of any that are documented."[140] Neinast was then asked, "Has AT&T Florida conducted an assessment within the last ten years to determine the need for CLECs in Florida to purchase choke trunks?" to which he replied "We haven't performed a study of that sort. We have required CLECs to have choke trunks." Neinast continued, "The expectation that all carriers would install choke trunks was an SBC convention. In fact, the Bellsouth philosophy was that they had choke trunks for themselves but never had required CLECs to install them."

However in Neinast's rebuttal testimony, he testified, "No, I am not aware of any AT&T Florida ICA that does not require mass calling trunks."[141] However, under cross examination, Mr. Neinast had a different answer:

> Q: Do all CLECs in Florida right now actually have trunk chokes—choke trunks in service?
> A: No. Not actually, no. Because I believe the—Bellsouth did not require them of other carriers, and that was identified after the AT&T/Bellsouth merger. And so the department that I'm in, the AT&T technologies organization, has visited that issue, and that's why I testify on behalf of the networks operations organization. And *we believed that this was not in the best interest of AT&T*, so that policy was changed around—I guess it was in 2007.[142] (italics added)

Not only did Mr. Neinast say at hearing that he knows that CLECs in Florida do not have choke trunks while he said the opposite in direct testimony, but Mr. Neinast then correctly stated at hearing that AT&T's decision to suddenly require CLECs to purchase choke trunks was made after its merger with BellSouth because this was "in the best

[140] Neinast Deposition, page 14 at line 2.
[141] Nenast Rebuttal, page 4 at line 13.
[142] Hearing Transcript, page 000517 at line 15.

interest of AT&T." It is inappropriate for CA to be forced to purchase useless services from AT&T in pursuit of the best interests of AT&T.

Thus, Neinast has confirmed that no network outage has ever been documented in Florida that was caused by a lack of CLEC choke trunks even though Bellsouth's pre-merger policy was not to require choke trunks with CLECs, which policy was in effect for over a decade after the Telecom Act was passed. Mr. Neinast also testified at hearing that the most recent choke event nationwide that he could cite happened in 2002, 13 years ago.[143] Neinast was also asked at hearing:

> Q: So you said between—so between the telecom act and then, and then the acquisition of Bellsouth you said Bellsouth ICAs didn't require choke trunks?
> A: That's correct.
> Q: Ok. Are you aware of any mass calling events in Bellsouth territory during that time?
> A: No.

Many CLECs today still have BellSouth-era ICAs in Florida which do not require choke trunks, and AT&T has made no attempt to force those CLECs to obtain choke trunks. AT&T could, if it chose to, notice those agreements for termination to force negotiation of a new agreement as CA has done. If it did, then it could attempt to require those CLECs to obtain choke trunks. However, it instead chooses to allow those carriers to continue without choke trunks. Not only does this clearly show that AT&T is attempting to discriminate against newer CLECs like CA, but it also shows that this is not really a safety issue at all. AT&T is not even attempting to use remedies that it has available to force those legacy CLECs to buy choke trunks to solve this alleged critical safety issue. CA counsel questioned Pellerin about this at hearing:

[143] Hearing Transcript, page 000519 at line 2.

> Q: Okay. But even with the technical changes, whether they occurred or not, why hasn't AT&T told these companies that have ICAs in evergreen status, why hasn't AT&T sent a notice of termination and demanded a new ICA be negotiated?
> A: It's a business decision. Some of that is associated with resources involved in negotiating new agreements.[144]

Thus, what Pellerin describes as AT&T's "business decision" trumps what Neinast has characterized as a critical safety issue, while AT&T proposes that CA must not be entitled to make the same "business decision" for itself and its own subscribers.

AT&T has submitted Exhibit 1 to Neinast's deposition in support of its position. However, this exhibit does not actually support AT&T's position in this arbitration because:

1. AT&T's proposed language for Network Interconnection 4.3.6.1 entitled "High Volume Call In (HVCI)/Mass Calling (Choke) Trunk Group" states that, "This trunk group shall be one-way outgoing only and shall utilize MF signaling." Ray testified in his direct testimony, "HVCI or 'choke' trunks are a relic of a telecommunications network that no longer exists; choke trunks are deprecated with the use of Signaling System 7 for the exchange of call traffic between carriers. This agreement already requires all trunks to be SS7, and so choke trunks would be useless."[145] However, AT&T's language still requires the outdated MF signaling and not the modern SS7. Neinast's Exhibit 1 is actually entitled "Network Management SS7 Controls for High Volume Call In (HVCI) Events" which does not apply to MF choke trunks at all.

[144] Hearing Transcript, page 00039 at line 2.
[145] Ray Direct, page 37 at line 13.

2. Neinast's Exhibit 1 makes clear that the issue, initially raised by AT&T's predecessor SBC in 2003, is actually that the industry identified that choke trunks using MF signaling (such as those proposed by AT&T's language here) were not supported by more modern switches and that the industry should migrate to modern SS7 technology instead. "MF trunking was retained to handle HVCI as companies migrated their networks to SS7." This directly contradicts AT&T's proposed language in in 4.3.6.1 which requires one-way HVCI trunks with MF signaling. The suggested resolution states "Procedures need to be developed to address current technologies, such as SS7, softswitches etc. for HVCI event overload and network congestion prevention and or defensive mechanisms. Establish procedures for standing controls for HVCI codes in SS7 networks." This suggested resolution, put forth by SBC, says nothing about continued use of choke trunks. In fact it says the opposite, it says that the problem should be solved by migrating to SS7, which is exactly what Ray testified is the proper modern solution. The suggested resolution does not mention choke trunks at all, and certainly does not mention requiring CLECs to purchase them from ILECs.
3. Neinast Exhibit 1 further clarifies that migrating **away from MF** choke trunks and instead to SS7 network architecture is the proposed solution on page 8 (top), where the document states "Role in HVCI processing, HVCI tandem, No role except where the originating office is not capable." This statement makes clear that the HVCI tandem itself is not part of the exchange of HVCI traffic between carriers unless the originating switch is not SS7 and LNP capable. Agreed language in this ICA being arbitrated requires interconnection trunks to use SS7

as well as LNP, therefore according to the Neinast-1 exhibit the HVCI tandem would have no role at all because there would be no need for MF HVCI trunks.

4. AT&T's Neinast Exhibit 1, which it claims supports its position, actually contains no mention at all of compelling CLECs to purchase HVCI trunks which is AT&T's position here.

At hearing, Neinast was asked about the technical parameters that would trigger a mass calling event:

> Q: How many concurrent calls would it take to impair AT&T's switch?
> A: That's—that's—first of all, that information, I believe, at least my legal counsel and my department has told me that that's confidential and proprietary, and it also involves vendor software and hardware.
> …Q: Would it be safe to say that more than 100 concurrent calls would be required to jam up a switch?
> A: I don't know.[146]

CA was trying to quantify exactly how much traffic it would have to send to AT&T all at once to cause a problem. CA believes that CLEC switches are substantially smaller in scale than are ILEC switches, and a CLEC switch is not even capable of sending the volume of calls that would cause a choke condition for an AT&T tandem switch. However, Neinast refused to answer the question.

CA counsel also asked Neinast at hearing:

> "Q: Ok, other than industry standard bodies that you mentioned, are there any other—are you aware of any other legal or statutory requirements supporting AT&T's position requiring choke trunks?
> A: I'm not aware of any, of any laws that would require that.[147]

During the course of negotiations with AT&T prior to this arbitration, Ray testified that "AT&T did not respond to CA on this issue."[148] AT&T has not refuted this claim.

[146] Hearing Transcript, page 000511 at line 3.
[147] *Id.*, page 000515 at line 20.

Surely, if this were really a critical safety issue, it would have warranted some discussion between the parties during the negotiation phase. AT&T's refusal to engage CA in any way on this issue lays bare its true intentions of simply increasing CA's costs without justification.

Finally, as Ray testified , "It is also discriminatory, because this requirement is not imposed uniformly by AT&T upon CLECs and CMRS carriers, and AT&T's proposed language does not impose any requirements upon AT&T to order choke trunks to CA."[149] AT&T has done nothing to refute this claim, and if this were really a safety issue as Neinast asserts then choke trunks (which AT&T's language mandates must be one-way) would surely be required in both directions between AT&T and CA.

Presented with very similar testimony and evidence, the Michigan PSC sided with CA's position, confirming an arbitration panel's order:[150]

> 1. High Volume Call In (HVCI) Trunk Groups
>
> AT&T Michigan argues that the Commission's failure to adopt the incumbent local exchange carrier's (ILEC's) language that would require the CLECs to establish HVCI trunks to interconnect with AT&T Michigan facilities will leave the public switched telephone network (PSTN) vulnerable to overload caused by mass calling events. The ILEC argues that the Commission based its decision on erroneous findings that are unsupported by the record. It argues that these findings should be reconsidered and reversed, based on industry practice.
>
> AT&T Michigan argues that the record does not support the Commission's finding that the CLECs are not likely to experience call surges of the type the HVCI trunks are designed to handle. Further, the ILEC argues, the evidence of waste cited by the Commission is merely anecdotal and insufficient to support the conclusion that HVCI trunks are not needed. AT&T Michigan further argues that there is no evidence to suggest that there are abilities within the modern switch to prevent

[148] Ray Direct, at page 37 at line 22.
[149] *Id.*, at line 28.
[150] Order on Rehearing, MI U-16906 at pages 3-6. For full text, see, http://www.dleg.state.mi.us/mpsc/orders/comm/2012/07-30-2012.pdf.

network problems from call surges that do not require the use of HVCI trunks.

Moreover, AT&T Michigan argues, there is no enforcement provision in the CLECs' proposed language. In the ILEC's view, the proposed language would not require the CLECs to do anything at all to prevent problems, merely to react after an event occurs. It argues that the nature of a mass calling event is such that reactive provisions will not protect the PSTN.

Finally, AT&T Michigan argues, the absence of mass calling events that might require the HVCI trunks is no reason to delete the requirement that the CLECs provide them. It argues that as other CLECs adopt this arbitrated agreement under the provisions of the federal Telecommunications Act, 47 USC 252(i), the problem will become widespread and increase the risk and the possible severity of that risk to the PSTN.

The CLECs respond that the Commission's findings and conclusions on this issue are without error. They point out that the language proposed by the CLECs and adopted by the Commission permits the CLECs more flexibility in addressing the possibility of mass calling events, and permits the CLECs to design their networks in a manner that most efficiently handles traffic to and from their customers. They argue that AT&T Michigan's claim that the record does not support the Commission's conclusions is not accurate.

The CLECs point out that their position and evidence was more persuasive to the arbitration panel as well as to the Commission. The CLECs point to the testimony of Collin Rose who stated: ". . . similar to other competitive providers, DayStarr has very few residential customers and as a result the choke trunks are rarely used. Mass calling events are almost always directed to elicit responses from residential customers, not business customers." Rose testimony, p. 3. Mr. Rose also stated that the choke trunks are a remnant of the traditional telecommunications network that should no longer be required given the availability of other options. He stated that each carrier has the capability as well as the incentive to design a network architecture that will prevent call blocking. The CLECs point out that AT&T Michigan presented no testimony to refute the CLECs' assertion that modern switch capabilities can be used to prevent problems from network surges, without the necessity of HVCI trunks.

The CLECs further state that the Commission's decision on this issue will not leave the PSTN without protection and that AT&T Michigan's arguments in that regard are mere restatements of the arguments presented in its objections to the DAP. They argue that the Commission has already considered and rejected these arguments, and there is no need to reconsider them.

As to the argument that the CLECs' language provides only reactive requirements for the CLECs, they state that the CLEC proposed

> language actually requires each party to manage its own traffic to avoid blockage on the PSTN. If choke trunks are the most efficient way of doing that, the party should employ it. Where there are other means to protect the PSTN that are more efficient, the carrier should be permitted to employ that method, without the requirement to establish trunk groups that are rarely if ever used.
>
> The Commission finds no new argument raised that would require reaching a different conclusion on this issue than expressed in the February 15, 2012 order. Each party has the responsibility to design its network architecture to prevent call blockage, and each party has an incentive to do so. Contrary to AT&T Michigan's position that there is insufficient reason for the CLECs to prevent a problem, the Commission finds that a CLEC would not be in business long if its actions permitted a problem to occur. Moreover, the Commission notes that AT&T Michigan has not presented any evidence that the modern switch is not capable of preventing call surge problems without the necessity for choke trunks. As to its argument that another CLEC may obtain the same terms and conditions provided in this arbitrated agreement, the Commission points out that the carrier must be in a similar situation, and take the entire contract as a whole.[151]

Similar to the Michigan case, AT&T has not produced any evidence in this proceeding that modern switches using SS7 are not capable of preventing call blocking due to mass calling events without the purchase of choke trunks. The evidence is overwhelmingly in support of CA's position on this issue and its proposed language should be adopted.

[151] *Id.*

ISSUE 41: Should the ICA include Communications Authority's language providing for SIP Voice-over-IP trunk groups?

CA's Position on the Issue

Yes. CA believes that if, subsequent to a conforming ICA being filed in this docket, AT&T later offers more modern, cost effective local interconnection to others that CA should have an equal ability to order the same interconnection services offered to others without the need to re-negotiate/re-arbitrate this entire agreement.

Discussion

AT&T has an anti-competitive motive for keeping CLECs interconnected using legacy technology because legacy TDM trunks are less scalable and more expensive for the CLEC. CA's compromise language does not require AT&T to develop or invent anything new; it simply prohibits AT&T from offering modern services selectively to others and not to CA. While CA has cited current services offered by AT&T on a commercial basis for SIP interconnection (AT&T Voice Over IP Connect Service), AT&T claims that it is not technically capable of SIP interconnection for the purpose of local interconnection. AT&T makes this argument even though it has been specifically directed to offer IP-IP interconnection via a filed ICA by the Michigan PSC.[152]

AT&T has refused CA's proposed language which would provide SIP local interconnection as an option to CA instead of TDM local interconnection under this agreement claiming technical infeasibility. However, AT&T has not shown that the

[152] Decision of the Arbitration Panel, "In the matter of the petition of Sprint Spectrum L.P. for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish interconnection agreements with Michigan Bell Telephone Company d/b/a AT&T Michigan," Case No. U-17349. The full arbitration panel's report can be found online here: http://efile.mpsc.state.mi.us/efile/docs/17349/0024.pdf. (Hereinafter "Panel Decision for Case No. U-17349")

technology that it already uses to offer its commercial SIP interconnection service could not be employed to provide local interconnection to CA.

In his rebuttal testimony, Ray testified:

> Some version of AT&T offers SIP termination for IP-originated calls. It is called AT&T Voice Over IP Connect Service (AVOICS) and my previous company subscribed to the service. It worked well. I do not believe that the AVOICS service is technically distinct from local interconnection service, and so I do not believe that AT&T is not technically capable of local interconnection in the same manner. It seems to me that AT&T is willing to provide modern interconnection when such service generates revenue for AT&T, but claims technical infeasibility for local interconnection which would both be revenue-neutral and would also help CLECs to reduce unnecessary costs which is contrary to AT&T's business objectives.

AT&T has not refuted Mr. Ray's claims, and did not cross-examine Mr. Ray on this issue.

Federal regulations support CA's position. 47 CFR §51.305 "Interconnection" states:

> (a) An incumbent LEC shall provide, for the facilities of any requesting telecommunications carrier, interconnection with the incumbent LEC's network: (1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both; …(4) On terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself.…(f) If technically feasible, the incumbent LEC shall provide two-way trunking upon request., (g) An incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve interconnection consistent with the requirements of this section.

Regardless of which AT&T entity operates the service, AT&T's AVOICS product is interconnected with AT&T Florida's network for the exchange of telecommunications traffic. This is easily demonstrated by the fact that AVOICS is a Voice-over-IP product, and AVOICS customers can place telephone calls to AT&T Florida customers. Thus, AT&T Florida's assertion that it is not technically capable of IP Interconnection is false, although such an interconnection might today require the resources of one or more AT&T affiliates because AT&T has chosen to allocate its assets in that manner.

CA argues that, under the requirements of 47 CFR §51.305 it is entitled to IP Interconnection terms in this agreement. However, as a compromise CA instead proposed that it simply be afforded its rights under 47 CFR §51.305 to obtain the same terms that any other carrier might be offered for IP Interconnection in the future by AT&T Florida, including its affiliates. The plain reading of this rule does not seem consistent with AT&T's view that this entire agreement must be scrapped and re-negotiated whenever it becomes publically known that AT&T is providing IP Interconnection to other carriers or its own affiliates. That would be very prejudicial to CA and all other CLECs, and would permit AT&T to claim that it has not adopted current technology and use that as a competitive weapon against CLECs until or unless the claim is eventually proven to be false. If the claim is later proven false, then under AT&T's proposed language CA would be required to undertake this entire arbitration again and absorb all of the expense involved a second time.

AT&T's reliance on the all-or-nothing rule is misplaced; that rule governs ICA adoptions. CA has not proposed to adopt all or part of any other ICA. CA simply has

asserted its clear rights under 47 CFR §51.305(4), which stands distinct from its ability to adopt another carrier's ICA. It seems clear that AT&T desires an outcome here which would require CA to abandon this expensive and resource-intensive ICA which CA is now arbitrating in order to obtain fair treatment in the future, rather than simply providing for that fair treatment in this ICA today.

Thus, if this Commission finds it impractical to adopt CA's language which would entitle CA to equal treatment as envisioned by 47 CFR §51.305, then CA requests that this Commission require that IP Interconnection terms be provided in this agreement now as the Arbitration Panel at the Michigan PSC suggested in its decision for Case No. U-17349. The arbitration panel found similarly to CA's position suggesting that the ICA language contain language allowing for future IP interconnection:

> The Panel therefore recommends that the Commission suggest that AT&T's proposed language in Sections 3.11.2.2 through 3.11.2.2.2 be modified, hopefully by agreement of the parties, to read as follows:
>
> > 3.11.2.2 This agreement governs traffic that Sprint delivers to AT&T Michigan pursuant to this agreement in TDM format today, and neither provides for, nor precludes the possibility of, IP-to-IP interconnection at some time in the future.
> >
> > 3.11.2.2.1 INTENTIONALLY LEFT BLANK
> >
> > 3.11.2.2.2 After the effective date of the Agreement, Sprint may propose to AT&T Michigan that the parties amend the Agreement to provide for IP-to-IP interconnection (and/or to permit Sprint to deliver traffic to AT&T Michigan in IP format rather than in TDM format). If, after Sprint makes such a proposal, the parties do not agree on an amendment, Sprint may seek resolution of the matter by invoking Dispute Resolution pursuant to Section 12 of the Agreement's General Terms and Conditions, and the Commission shall be the forum for any Formal Dispute Resolution. Neither Sprint nor AT&T Michigan has waived the right to contend that the Commission does or does not have authority to establish terms and conditions for IP-to-IP interconnection by agreeing to this Section or by any other action or inaction.[153]

[153] Panel Decision for Case No. U-17349 at pages 8-9.

> In making this recommendation, the Panel would also ask that the Commission encourage AT&T (through its potentially affected affiliate, AT&T Corp.) and Sprint to work together in a different venue—such as before the FCC—to facilitate the IP-to-IP interconnection that is being sought by Sprint in this proceeding. To the Panel, it seems clear that the IP-based technology is the future of the telecommunications industry, and that its adoption on a broad scale would provide both efficiencies and cost savings to all providers.[154]

Testimony in this arbitration has made it clear that AT&T does not have to accept, or even negotiate, with a CLEC on an amendment that does not include a change in law. If this was different, then CA wouldn't bother with this issue. As it is, however, this provision is critical to allow CA to maintain competitive parity and IP interconnection should be available in the future.

This Commission could choose to follow the final decision of the Michigan PSC and require full IP-IP interconnection as an alternative. In Case No. U-17349, the full Commission decided to go further than the arbitration panel suggested and held:

> The Commission finds that the arbitration panel's determination on this issue must be reversed. IP interconnection has become an important and prevalent form of interconnection in the telecommunications industry. TDM-based switching is declining, and the FCC has requested Page 5 U-17349 that incumbent local exchange carriers (ILECs) negotiate IP interconnection in good faith. AT&T Michigan argued that it is unable to provide Sprint with IP interconnection because the applicable equipment is owned by a separate, but affiliated, out-of-state company. Sprint disputed this, and asserted that without Commission intervention, it will be forced to use inefficient and expensive TDM technology to the financial detriment of the company. The Commission agrees with Sprint, and finds that pursuant to Commission precedent, federal rules and law, Sprint's position on the issue should be adopted.
>
> AT&T Michigan alleged that the interconnection requirement of Section 251(c)(2) does not extend to IP-to-IP interconnection. This legal question is currently pending before the FCC in a rulemaking proceeding. However, in its recent further notice of proposed rulemaking, the FCC observed that, section 251 of the Act is one of the key provisions

[154] Decision of Arbitration Panel, U-17349.

> specifying interconnection requirements, and that its interconnection requirements are technology neutral they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks CAF order, ¶ 1342 (emphasis added). Although the FCC has yet to determine whether IP-to-IP interconnection falls under an ILEC's Section 251(c) obligations, the Commission notes that in the interim, the FCC did not request that state commissions refrain from deciding the issue…
>
> Accordingly, the Commission finds that pursuant to Section 251(c)(2)(A), an ILEC, such as AT&T Michigan, not only must provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection, but also IP interconnection, with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access.[155]

In any event, CA's ability to achieve IP-IP interconnection with AT&T through the language in this ICA must be preserved.

[155] Commission Decision, U-17349 at pages 3-12 (December 6, 2012). The full text can be found online here: http://efile.mpsc.state.mi.us/efile/docs/17349/0027.pdf

ISSUE 42: Should Communications Authority be obligated to pay for an audit when the PLF, PLU and/or PIU factors it provides AT&T Florida are overstated by 5% or more or by an amount resulting in AT&T Florida under-billing Communications Authority by $2,500 or more per month?

Resolved.

ISSUE 43(i): Is the billing party entitled to accrue late payment charges and interest on unpaid intercarrier compensation charges?

CA's Position on the Issue

CA believes that late payment charges and interest are mutually exclusive and may not be combined. If combined, CA believes that the resulting combination would be unfairly punitive and violate Florida usury laws.

Discussion

Florida's usury law can be found at Title XXXIX, Chapter 687. §687.02 states, "All contracts for the payment of interest upon any loan, advance of money, line of credit, or forbearance to enforce the collection of any debt, or upon any obligation whatever, at a higher rate of interest than the equivalent of 18 percent per annum simple interest are hereby declared usurious."[156]

The statute's clear intent is to limit charges arising from late payments to 18%. The addition of late payment charges on top of the maximum interest rate flouts the statute's intent by effectively adding two layers of charges for late payments. As the Florida Supreme Court long ago explained, "[t]he very purpose of statutes prohibiting usury is to bind the power of creditors over necessitous debtors and prevent them from extorting harsh and undue terms in the making of loans." Chandler v. Kendrick, 146 So. 551, 552 (Fla. 1933). Although AT&T is not extending a loan to CA, the proposed payment terms in the ICA meet the definition of "usurious contracts."

[156] *See*, http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0600-0699/0687/Sections/0687.02.html.

ISSUE 43(ii): When a billing dispute is resolved in favor of the billing party, should the billed party be obligated to make payment within 10 business days or 30 business days?

Resolved**.**

ISSUE 44: Should the ICA contain a definition for HDSL-capable loops?

CA's Position on the Issue

CA desires to clarify this point in the Agreement because AT&T has recently conflated the terms "DS1 loop", "HDSL loop" and "HDSL-capable loop" in order to unlawfully deny CLECs access to HDSL-capable loops in Tier 1 Wire Centers.

Analysis

AT&T's predecessor BellSouth took the same position that CA now takes before the FCC in 2003 during the Triennial Review proceeding, while AT&T now seems to take the opposite position after getting the relief it was requesting in 2003. In Staff's first set of interrogatories, AT&T was asked:

> 50. What is a HDSL loop and how is it different from a HDSL-capable loop? Please explain in detail, including when either a HDSL or a HDSL-capable loop has to be unbundled."

Kemp responded:

> The term "'HDSL Loop" is used interchangeably with the term "HDSL-capable loop." There is no difference in meaning. CA seeks to create an artificial distinction between "HDSL" and "HDSL-capable" that has no basis in fact or in common usage within the industry…Based on the total digital speed of 1.544 megabytes per second for HDSL loops, the unbundling rules for DS1 loops apply to HDSL loops.[157]

However, in Kemp's deposition, she was asked to review CA Exhibit 1 to staff's third set of interrogatories which is a letter from BellSouth to the FCC and is referenced in the FCC's Triennial Review Remand Order ("TRRO") at paragraph 163, footnote 454.[158] Kemp was asked "Would you agree that the last two paragraphs on page 2 takes

[157] A DS1 actually has a speed of 1.544 megabits per second, which is an order of magnitude slower than 1.544 megabytes per second.
[158] Triennial Review Remand Order on Remand, WC Docket 04-313 (Adopted December 15, 2004).

the position that those four types of copper loops would continue to be available in wire centers where DS1 unbundling relief is granted?" Kemp responded, "That is what the letter says." Kemp was then asked "Is this consistent with your position?" to which Kemp replied "No, it's not." Thus, it is clear that Kemp was untruthful in her response to the interrogatory citing "CA seeks to create an artificial distinction…" when in fact it was BellSouth which cited this very same distinction in pursuit of its own interests ten years before CA existed. Kemp also admits in her deposition that her answer also directly contradicted BellSouth's own earlier legal position, and therefore her position violates the doctrine of judicial estoppel.[159] Florida follows the "universal rule" of judicial estoppel with the seminal case being *Salcedo v. Asociacion Cubana, Inc.*[160] That case held:

> The real meaning of the rule concerning estoppels of the kind relied on by appellees is that a party, who in an earlier suit on the same cause of action, or in an earlier proceeding setting up his status or relationship to the subject-matter of his suit, successfully assumes a factual position on the record to the prejudice of his adversary, whether by verdict, findings of fact, or admissions in his adversary's pleadings operating as a confession of facts he has alleged, cannot, in a later suit on the same cause of action, change his position to his adversary's injury, whether he was successful in the outcome of his former litigation or not.

As Ms. Kemp admitted at the hearing, this is precisely what AT&T is attempting to do in its HDSL argument. Although it refers to itself generically as "AT&T" and "AT&T Florida," the party to this proceeding is in fact BellSouth Telecommunications, Inc. This is the same legal entity which wrote the letter to the FCC produced in CA's exhibit. Under the judicial estoppel doctrine, BellSouth is prohibited from taking a

[159] *See*, New Hampshire v. Maine 426 U.S. 363 (1976), "[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." citing, Davis v. Wakelee, 156 U.S. 680, 689 (1895).
[160] 368 So. 2d 1337, 1338 (Fla. 3d DCA 1979), *abrogated on other grounds in* Ed Ricke & Sons, Inc. v. Green, 609 So. 2d 504, 506 (Fla. 1992).

position opposite from the position that it previously took in the FCC proceeding in its successful attempt to convince the FCC to declare DS1 loops unimpaired in Tier 1 Wire Centers.

ISSUE 45: How should the ICA describe what is meant by a vacant ported number?

CA Position on Issue

The agreement should simply require the parties to comply with FCC rules for number portability and the return of vacant ported numbers to the original carrier.

Discussion

CA objects to AT&T's language, because it goes beyond the reasonable regulatory requirements and instead seems to require that any time an original end user no longer owns a number, the number must return back to AT&T. This would mean that if end user A ported their telephone number to CA, and then conveyed the number to end user B who desired to assume end user A's service with CA, CA would be required to release the number, and the customer, back to AT&T. CA's language clarifies that only if the number is no longer assigned to a customer must it be returned to AT&T.

In response to CA's discovery, AT&T responded that it is unaware of any legal or regulatory decision which supports its position[161] on this issue and AT&T has not shown how it would be harmed by CA's proposed language. CA believes that its position reflects current industry standards and is unaware of any situation where a customer was required to switch telephone carriers in order to keep their phone number.

CA urges the Commission to strike AT&T's language so that FCC rules and precedent on the return of vacant ported numbers clearly apply.

[161] AT&T Response to CA First Set of Interrogatories.

ISSUE 46(i) Should the ICA include limitations on the geographic portability of telephone numbers?

CA's Position on Issue

No. This was an important issue during the time of dial-up modems—that time has passed. Now there is no legitimate reason why this language needs to be included in the Agreement. It is an attempt by AT&T to restrict the types of service and geographic areas of CA's network.

Discussion

With the advent of VoIP, it is well established that a CLEC does not need to own customer-side network facilities in any specific geographic area in order to serve that area. VoIP is often provided over the Internet, where the end user provides its own broadband connection and the VoIP call is transported from the CLEC's network (sometimes through a VoIP reseller who purchases wholesale services from CA) to the customer over the Internet. This scenario would be needlessly prohibited by AT&T's language, which is why CA believes this language should be stricken entirely. AT&T's language serves solely to limit its competition, which is anti-competitive and inconsistent with the intent of the Act. CA does not disagree that it must interconnect with AT&T at a tandem within the geographically-correct LATA to exchange traffic for NXXs within the LATA. If CA interconnects in that manner, the location of CA's customer does not impact AT&T in any way. CA proposes alternate language to clarify that point, and AT&T has cited no technical basis for its objection to that language.

CA urges the Commission to adopt its language for Issue 46(i).

ISSUE 46(ii) Should the ICA provide that neither party may port toll-free service telephone numbers?

Resolved.

ISSUE 47: Should the ICA require the parties to provide access to live agents for handling repair issues?

Resolved.

ISSUE 48(a): Should the provisioning dispatch terms and related charges in the OSS Attachment apply equally to both parties?

ISSUE 48(b): Should the repair terms and related charges in the OSS Attachment apply equally to both parties?

CA's Position

Yes, on both sub-issues. AT&T's proposed language does not provide parity. It requires CA to compensate AT&T when CA causes AT&T to dispatch a technician and the problem is not within AT&T's network, while denying CA the same reasonable terms.

Discussion

AT&T's language represents a refusal to compensate for unnecessary truck rolls it forces CA to undertake, but then provides CA with no recourse and instead, CA must absorb all of the costs of AT&T's error if the opposite occurs. As described in CA's testimony, AT&T often reports to CLECs that a service is installed or repaired when in fact AT&T has not installed or repaired the service. The CLEC then must dispatch its own technician to the customer premise, who finds that the service was not installed or repaired after all. CA language would hold AT&T to the same standard that AT&T's language holds CA to; each party would be required to compensate the other for wasting each other's resources. CA has added a rate parity requirement so that CA's rate cannot exceed AT&T's rate.

Although Ms. Kemp was AT&T's designated expert witness on this issue, she was unable to testify about it at hearing:

> Q: So let's say the situation is reversed and Communications Authority reports trouble to AT&T. AT&T rolls a truck and finds out that actually it's Communications Authority's issue, not AT&T's. Isn't it true that in that case, AT&T charges something called an isolation charge?
> A: I don't know.[162]

At hearing, Kemp claimed to not even have a basic knowledge of how this process works. But that's not what she testified in her direct testimony about AT&T's language which permits exactly that isolation charge by AT&T to CA, "The language in section 6.3 of the OSS attachment limits AT&T Florida's ability to bill CA to include only situations in which incorrect or incomplete information, such as address, or contact name/number, has been provided by CA and the incorrect/incomplete information resulted in an additional AT&T Florida dispatch.[163] CA's proposed language is a literal cut-and-paste of AT&T's language, making the terms reciprocal. If one party provides false information to the other resulting in a dispatch, then the falsifying party should have to pay for that dispatch. CA believes the Commission should approve its language for issue 48.

[162] Hearing Transcript, page 000666 at line 24.
[163] Kemp Testimony, page 34 at line 2.

ISSUE 49: When Communications Authority attaches facilities to AT&T Florida's structure, should Communications Authority be excused from paying inspection costs if AT&T Florida's own facilities bear the same defect as Communications Authority's?

Resolved.

ISSUE 50: In order for Communications Authority to obtain from AT&T Florida an unbundled network element (UNE) or a combination of UNEs for which there is no price in the ICA, must Communications Authority first negotiate an amendment to the ICA to provide a price for that UNE or UNE combination?

CA's Position on Issue

*No. CA believes that AT&T is required to offer all UNEs equally to all CLECs in Florida, so CA is entitled to order any UNE which AT&T is required to provide. AT&T unlawfully omitted certain UNEs from its pricing attachment without notice to CA during the negotiation period. *

Discussion

Federal regulations are instructive on this issue. 47 CFR §51.313 regarding "Just, reasonable and non-discriminatory terms and conditions for the provision of unbundled network elements" states: "(a) The terms and conditions pursuant to which an incumbent LEC provides access to unbundled network elements shall be offered equally to all requesting telecommunications carriers." AT&T's proposed language clearly violates this provision. AT&T repeatedly refused to discuss the pricing sheet (which contains the list of UNEs AT&T proposes to make available to CA) at all during negotiations. However, since arbitration began AT&T has stated that it was CA's responsibility to

ensure that AT&T's pricing document reflected all UNEs CA needs prior to the filing of the arbitration, and that CA is to be denied access to UNEs not shown in that document. AT&T has further stated that CA may request, but AT&T is under no obligation, to provide an amendment to this agreement later if a UNE has been inadvertently left out. Staff's interrogatory 57 asked "Is CA entitled to order any element which AT&T Florida is required to provide as a UNE, whether or not it is listed in this interconnection agreement?" AT&T responded, "CA is entitled to order from AT&T Florida only those network elements that are listed in the ICA, i.e. that the ICA permits it to order. This is a fundamental principle of law under the Telecommunications Act of 1996."

To the contrary, 47 CFR §51.313(a) clearly conflicts with AT&T's position, because AT&T's language would create an environment where different CLECs have access to different UNEs based upon their specific ICA language and not, as required "offered equally to all requesting telecommunications carriers". AT&T does not dispute that other CLECs today have ICAs which contain UNEs that AT&T quietly omitted from CA's ICA, which is clearly discriminatory.

Contrary to its assertions, at no time did AT&T provide CA with a complete list of Florida UNEs for which the Commission has previously set prices, after which the parties "negotiated away" certain UNEs in exchange for other voluntary provisions favorable to CA. None of that ever happened. AT&T implied that the pricing list that it provided to CA in negotiations was a complete list of UNEs, and CA believed that this was true. Then AT&T refused to engage in any discussions where CA might have learned about AT&T's scheme to omit certain UNEs from the list.

The intentional nature of AT&T's actions here is made plain by Kemp's direct testimony, "If CA were to come to AT&T Florida during the term of the ICA and say 'I forgot to include this UNE in the ICA and now I want to amend the ICA to include it', AT&T Florida would be perfectly within its rights to decline to do so."[164]

The premise that a UNE could be omitted from the ICA because it was "forgotten" is not consistent with the requirement that they be "offered equally to all requesting telecommunications carriers." AT&T had a duty to include them all (the "offer"), and failed to do so without disclosing that fact to CA at any time during the negotiations phase.

Further, in this proceeding AT&T has acted in bad faith in violation of 47 CFR §51.301 "Duty to Negotiate" which states "(b) A requesting telecommunications carrier shall negotiate in good faith the terms and conditions of agreements described in paragraph (a) of this section. (c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

… (5) Intentionally misleading or coercing another party into reaching an agreement that it would not otherwise have made;

(6) Intentionally obstructing or delaying negotiations or resolutions of disputes;

(7) Refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues;

[164] Kemp Direct, page 41 at line 5.

(8)(ii) Refusal by an incumbent LEC to furnish cost data that would be relevant to setting rates if the parties were in arbitration."

AT&T intentionally mislead CA to believe that all UNEs available in Florida were contained in its proposed pricing documents, which CA later learned was not true after the arbitration had commenced. After multiple attempts by CA to obtain cooperation, AT&T refused to discuss the pricing list (which contains the UNEs) at all. The intentional nature of this ruse is made plain again in Kemp's rebuttal testimony, "If CA wants the ability to buy a UNE that another CLEC can buy through that CLEC's ICA, CA must request such terms during negotiations. The negotiation period that led to this arbitration was the chance for CA to have made such a request."[165] However, Kemp said something a little different at hearing:

> Q: Why wouldn't as standard practice AT&T just provide all the available UNEs in its standard boilerplate ICA to start with?
> A: AT&T doesn't intentionally not include UNEs in its generic interconnection agreement.

So on the one hand, Kemp says that CLECs are responsible for knowing what UNEs are or are not in AT&T's price list and must demand specific UNEs during negotiations. On the other hand, Kemp says that AT&T doesn't intentionally omit UNEs. Both assertions cannot logically be true. If AT&T included all available UNEs in the price list, then CLECs would not have to fight to ensure that they get them all. If AT&T had not obstructed negotiations, refused to designate a representative with binding authority and refused to provide a complete list of all UNEs which the Commission set prices for in the most recent generic proceeding, then CA would have been able to determine that certain

[165] Kemp Rebuttal, page 17 at line 21.

UNEs were missing from AT&T's proposed pricing schedule during the negotiation phase.

AT&T's clear violations of 47 CFR §51.313(a) must not be disregarded; they are material to this issue in which AT&T seeks to subvert the letter and the spirit of the rule to deny CA (and all other adopting CLECs) access to UNEs which AT&T is required to provide.

CA believes that the Commission should order that all UNEs for which the Commission has set a price in the most recent generic proceeding must be placed into the pricing attachment which is to become part of this ICA. If AT&T is compelled to do that, then neither party's language should be required for this issue because there would be no UNEs left-out for CA to request later, and CA could invoke change-of-law to get any new UNEs that may become available in the future. CA believes that this is the only way to fulfill the requirements of 47 CFR §51.313(a) which requires that UNEs must be "offered equally to all requesting telecommunications carriers."

ISSUE 51: Should AT&T Florida be required to prove to Communications Authority's satisfaction and without charge that a requested UNE is not available?

CA's Position on Issue

Yes. CA believes its proposed ICA language is reasonable to prevent AT&T from arbitrarily and incorrectly denying CA's UNE orders and claiming that no facilities exist when in fact they do exist, to which CA would otherwise have no recourse.

Discussion

In Ray's direct testimony, he testified "In my roles with AstroTel and Terra Nova Telecom, I have seen AT&T reject UNE orders and claim that no facilities exist when in fact facilities do exist. In these cases, it has been very difficult to obtain AT&T's cooperation to override the incorrect reject notice and get facilities installed. This is why CA seeks this language."[166] AT&T has not refuted this claim. AT&T did not cross-examine Ray on this issue. CA believes that it is clearly unfair for AT&T to fail or refuse to provide a timely means for CA to work around faulty information in AT&T systems which prevents CA from obtaining UNEs.

CA urges the Commission to adopt its language on Issue 51.

ISSUE 52: Should the UNE Attachment contain the sole and exclusive terms and conditions by which Communications Authority may obtain UNEs from AT&T Florida?

Resolved.

ISSUE 53: Should Communications Authority be allowed to commingle any UNE element with any non-UNE element it chooses?

[166]Ray Direct, page 43 at line 16.

CA's Position on Issue

Yes. CA believes that it is entitled to commingle facilities as specified in its language, and that AT&T's language restricts CA's ability to commingle in a manner inconsistent with FCC rules and orders.

Discussion

Federal regulations directly address this issue. 47 CFR §51.309 states:

> (e) Except as provided in §51.318, an incumbent LEC shall permit a requesting telecommunications carrier to commingle an unbundled network element or a combination of unbundled network elements with wholesale services obtained from an incumbent LEC.
> (f) Upon request, an incumbent LEC shall perform the functions necessary to commingle an unbundled network element or a combination of unbundled network elements with one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC.

The rule requires an ILEC to commingle any unbundled network element or a combination of unbundled network elements with wholesale facilities and services.

CA believes the Commission should adopt its language for Issue 53.

ISSUE 54a: Is thirty (30) days written notice sufficient notice prior to converting a UNE to the equivalent wholesale service when such conversion is appropriate?

CA's Position on Issue

Yes, but not with AT&T's language as proposed. There are only two events that could trigger this provision: wire center reclassification or CA having improperly obtained too many UNE circuits on a specific route. In cases of wire center reclassification, CA cannot possibly transition its entire customer base to new service arrangements in 30 days.

Discussion

In addition to CA's practical concerns on its side, AT&T itself cannot provide the necessary services for such a transition in that time period. Upon notice from AT&T of a UNE sunset, CA must re-design and re-engineer the affected service(s) for all of its affected customers, and then must place orders for new service with AT&T or others to replace the sunset elements. This could involve hundreds or thousands of orders. Interconnection agreements typically have provided 180 days for such a transition, and CA continues to believe that this is reasonable. CA notes that the Triennial Review Remand Order ("TRRO") itself provided for an 18 month transition period so it seems well established that this is reasonable for wire center reclassification. However, that issue is addressed in 54b. Solely in cases where CA has obtained more UNEs than it is entitled to on a specific route, CA agrees that AT&T's language is reasonable.

CA's concern with AT&T's language for this item in UNE 6.2.6 is that the language is too broad. In the example given in Kemp's direct testimony about CA ordering more DS1 circuits at a specific address than permitted, there is no

disagreement.[167] CA's concern is that AT&T's language could also be read to apply in cases where a wire center reclassification is taking place, which then causes in-place UNEs to be sunset. In such an instance, CA would need considerable time to transition its customer base which could number in the thousands. If the issue is, as Kemp cited, that CA has improperly obtained a UNE in the first place, then CA agrees that 30 days is adequate time. Therefore, CA believes that AT&T's language (30 days) should be approved for UNE 6.2.6 to resolve this issue, but that the first sentence should read "***Except in the case of a wire center reclassification,*** if CLEC does not meet…" to make this language distinct from the language in issue 54b which addresses wire center reclassifications.

[167] Kemp Direct, page 47 at line 2.

ISSUE 54b: Is thirty (30) calendar days subsequent to wire center Notice of Non-impairment sufficient notice prior to billing the provisioned element at the equivalent special access rate/Transitional Rate?

CA's Position on Issue

No. The actual effect of AT&T's language, if approved, would be to prevent CA from using the most valuable UNEs it is entitled to such as dark fiber, because without adequate transition time it would likely be immediately bankrupt if AT&T ever invoked this sunset provision as proposed.

Analysis

CA notes that the TRRO provided for a substantially longer 18 month transition period that is codified in 47 CFR §51.319(a)(6).[168], so it seems well established that CA's 180 days is reasonable. In its first set of interrogatories, Staff asked, "64. …CA asserts that the only option to replace dark fiber if it were no longer available would be to obtain OC-48 if it desired to replace the service with another service from AT&T Florida. Are there other alternatives? If so, please identify." In response, Kemp stated "…any revocation of Dark Fiber is accomplished by disconnecting the Dark Fiber, there are no special access products analogous to Dark Fiber." However, when Kemp was cross examined by CA's counsel at hearing, she stated that dark fiber was available at wholesale to replace UNE dark fiber that is being sunset:

Q: Is there always a direct equivalent wholesale service to replace a UNE?

[168] (ii) Transition period for dark fiber loop circuits. For an 18-month period beginning on the effective date of the Triennial Review Remand Order, any dark fiber loop UNEs that a competitive LEC leases from the incumbent LEC as of that date shall be available for lease from the incumbent LEC at a rate equal to the higher of 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or, 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that loop element."

A: There is for loops and dedicated transport.
Q: What if it's dark fiber as an example of dedicated transport?
A: I believe so.[169]

Kemp has contradicted herself; her response to the interrogatory agrees with CA's assertion[170] but is exactly opposite to her testimony at the hearing.

Kemp also testified:

"Q: Could the true-up activity cause a service outage for CA or its customers?"
A: No, the language enables a true up of rates; no conversion of facilities is involved."[171] This statement was untruthful, as Kemp testified that "any revocation of Dark Fiber is accomplished by disconnecting the Dark Fiber." This would definitely be more than a true-up of rates and would cause a service outage for CA and its customers.

Kemp further testified that "CA's suggested 180 calendar days, or six months, is unreasonable."[172] However, CA cites that 180 days is far less generous than the FCC's proposed transition period in the TRRO for wire center reclassification sunset of UNEs "We adopt a 12-month plan for competing carriers to transition away from use of DS1- and DS3-capacity dedicated transport where they are not impaired, and an 18 month plan to govern transitions away from dark fiber transport."[173]

It's hard to imagine that CA's proposed 180 days is unreasonable, or that AT&T's proposed 30 days is reasonable, when the FCC itself provided 18 months for dark fiber

[169] Hearing Transcript, page 000674 at line 19.
[170] *See*, CA Response to AT&T first set of interrogatories, pages 39-40.
[171] Kemp Direct, page 49 at line 16.
[172] Kemp Direct at page 50.
[173] 47 CFR 51.319(a)(5)(iii). *Transition period for DS3 loop circuits.* For a 12-month period beginning on the effective date of the *Triennial Review Remand Order*, any DS3 loop UNEs that a competitive LEC leases from the incumbent LEC as of that date, but which the incumbent LEC is not obligated to unbundle pursuant to paragraphs (a)(5)(i) or (a)(5)(ii) of this section, shall be available for lease from the incumbent LEC at a rate equal to the higher of 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or, 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the *Triennial Review Remand Order*, for that loop element.

transport transition in these cases. CA believes that the Commission should approve its language, specifying a 180 day transition period for UNEs being sunset due to wire center reclassification.

ISSUE 55: To designate a wire center as unimpaired, should AT&T Florida be required to provide written notice to Communications Authority?

CA's Position on Issue

Yes. AT&T should provide actual written notice to CA for such major changes affecting CA. Simply posting a notice to a website or sending an email without sending notice under the ICA's notices provision is unlawful, unreasonable and could harm CA's customers without adequate warning to prevent disruption of services.

Discussion

Recognizing the seriousness of such a determination to CLECs, other ILECs provide written notice and at least one actually has meetings to discuss the planned transition. In response to CA's discovery, AT&T responded that there is no circumstance where CA could provide notice to AT&T under this agreement by posting the notice to a website instead of following the notice provisions of the ICA.[174] This clearly shows that AT&T's language is unreasonable and disparate. Moreover, AT&T is in fact capable of sending letters via certified mail and already does so as shown in Exhibit 4.

In her deposition, Kemp was asked, "Does AT&T Florida send the confirming email as part of its process to ensure that wire center impairment emails have the correct address without any typographical errors or the emails are not inadvertently sent to a spam folder by the recipient?", and then "Would AT&T Florida object to implementing such measures to ensure the correct address…" to which she responded "Yes, we would." This response indicates that even if it gets the language that it has proposed permitting emailed notices, it has no intention of taking reasonable steps to ensure that those notices

[174] AT&T Response to CA First Set of Interrogatories.

get delivered. This makes clear that AT&T's goal is to subvert the notice process during the wire center reclassification process, which would result in maximum harm to CA.

CA also notes that AT&T's proposed language seems to violate 47 CFR §51.333(a), which states: "Certificate of service. If an incumbent LEC wishes to provide less than six months notice of planned network changes, the public notice or certification that it files with the Commission must include a certificate of service in addition to the information required by 51.327(a) or 51.329(a)(2), as applicable. The certificate of service shall include: (1) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network and (2) The name and address of each such telephone exchange service provider upon which the notice was served."

Finally, AT&T submitted RPD #2 to its response to staff's first set of discovery, which contains three "accessible letters" of the type that AT&T seeks to impose upon CA in lieu of actual notice of non-impairment. The first notice was dated June 27, 2014 (CLECSE14-067) with an effective date of August 30, 2014 which constitutes **32 days**' notice to CLECs. This is far less than six months, and so under 47 CFR §51.333(a) AT&T was not only required to mail an actual notice to CLECs instead of an on-line letter, but it was required to provide a certificate of service for that notice as well.
The second notice was dated June 17, 2014 with an effective date of June 17, 2014 which constitutes **0 days**' notice to CLECs. This is unreasonable on its face, is also far less than six months, and so under 47 CFR §51.333(a) AT&T was not only required to mail an actual notice to CLECs instead of an on-line letter, but it was required to provide a

certificate of service for that notice as well. The third notice was dated October 14, 2014 with an effective date of October 7, 2014 which constitutes **NEGATIVE 7 days**' notice to CLECs. This is unreasonable on its face, is far less than six months, and so under 47 CFR §51.333(a) AT&T was not only required to mail an actual notice to CLECs instead of an on-line letter, but it was required to provide a certificate of service for that notice as well.

If AT&T's language in this issue were to prevail, and notices like these were to be posted to AT&T's website, then CA would very likely be out of business in short order. AT&T's own exhibits show, more clearly that CA ever could, how AT&T unfairly attempts to harm competition by engaging in such bad-faith gamesmanship by making changes which are likely catastrophic to CLECs while purposefully providing severely inadequate notice to CLECs. It is obvious what AT&T stands to gain from this scheme: it harms or potentially eliminates its competitors and reclaims its monopoly. In issue 55, AT&T seeks the Commission's complicity even now, after it has disclosed these documents which clearly show how it intends to unlawfully provide woefully inadequate notice of major network changes to CLECs. This would serve to revoke CLEC access to essential UNEs without adequate time to replace them, increase competitors' costs and eliminate competition for AT&T.

CA urges the Commission to approve its proposed language for Issue 55.

ISSUE 56: Should the ICA include Communications Authority's proposed language broadly prohibiting AT&T Florida from taking certain measures with respect to elements of AT&T Florida's network?

CA's Position on Issue

Yes. CA believes that in-service UNE facilities are a part of its network and are not subject to tampering or taking by AT&T for the purpose of serving AT&T customers.

Discussion

In some cases, CLECs have paid AT&T for loop conditioning on UNE loops and have performed their own pre-service testing on those loops prior to placing a customer's service on them. If AT&T takes a CLEC's working, conditioned, tested loop for its own customer and substitutes an inferior unconditioned, untested one, the CLEC's customers are made to suffer for the benefit of AT&T and its customers. This is unfair and does not represent parity; AT&T will not disadvantage its own customer in order to supply a UNE loop to a CLEC. CA's language does not impact AT&T's ability to replace or modify UNE facilities for repair purposes.

47 CFR §51.319 (8) states "Engineering policies, practices and procedures. An incumbent LEC shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice or procedure that disrupts or degrades access to a local loop or subloop, including the time division multiplexing-based features, functions and capabilities of a hybrid loop, for which a requesting telecommunications carrier may obtain or has obtained access pursuant to paragraph (a) of this section." CA believes that this requirement directly supports its proposed language which would

prohibit AT&T from disrupting and degrading service to a CA customer by taking a tested, accepted working loop away from CA's customer to be used instead for AT&T's own customer or business purposes. Notwithstanding the long-term potential incompatibilities, it is physically impossible for AT&T to take a UNE that is serving a CA subscriber and then substitute it with another facility without disrupting the CA subscriber's service. However short, there would be a disruption, and that is clearly prohibited by 47 CFR §51.319.

47 CFR §51.309(c) states, "A telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility for a period of time." This provision supports CA's position that the specific facility that CA has purchased, and not an alternate facility that AT&T might later want to substitute it for, is what CA is entitled to. In her direct testimony, Kemp erects a straw man in order to characterize CA's language as unreasonable "For example, if a cable serving CA is cut, it could be necessary for AT&T Florida to transfer CA's UNE circuit to a different cable to place it back in service. This certainly would not be tampering, but the vague unqualified language proposed by CA opens AT&T Florida to such a claim."[175] Kemp's assertion, however, is obviously false. CA's proposed language only applies to the tampering or taking of CA's UNE by AT&T "for its own benefit or business purposes or for its own customers." A repair of CA's UNE would not qualify as AT&T's business purposes or a change to benefit an AT&T customer.

At hearing, Kemp admitted that CA's concern is valid:

[175] Kemp Direct, page 52 at line 14.

> Q: So in the response it says—you say it would not switch for an, quote, inferior loop. So it's still the case that the CLEC has had a particular loop tested and AT&T has, has finished review of that. But isn't it possible that if they don't use the exact same loop, the loop provided by AT&T ultimately to the CLEC could have different technical characteristics than the original loop that was tested?
> A: It could."[176]

CA believes the Commission should adopt its proposed language for this issue.

[176] Hearing Transcript, page 000677 at line 2.

ISSUE 57: May Communications Authority use a UNE to provide service to itself or for other administrative purposes?

CA's Position on Issue

Yes. It is well settled that CLECs are permitted to order and use UNEs as a part of a CLEC's network for any lawful purpose, subject to certifications and impairment restrictions contained elsewhere in this Agreement. AT&T may not specify the manner in which CA may use UNEs to which it is entitled.

Again, federal regulations provide guidance on this issue. 47 CFR §51.309 "Use of unbundled network elements" states "(a) Except as provided in 51.318, an incumbent LEC shall not impose limitations, restrictions or requirements on requests for, or the use of, unbundled network elements for the service a requesting telecommunications carrier seeks to offer." This issue seems to revolve around exactly such a limitation, restriction or requirement. It is well established that many critical UNEs do not serve a specific subscriber even though the UNE is a part of the CLEC network which does serve subscribers. AT&T's language would unlawfully restrict CA's ability to purchase UNEs to only those which serve specific subscribers, which would be a severe limitation upon CA. This limitation would prevent the ordering or use of UNEs such as dark fiber transport, DS3 transport, Synchronization Timing, CLEC-to-CLEC cross-connects and more. Without these elements, no facilities-based CLEC could function. There is no legal basis for AT&T's restriction; CLECs are free to design their networks however they choose, including the purchase of available UNEs to support that network.

CA believes that the Commission should adopt its proposed language for issue 57.

ISSUE 58: Is Multiplexing available as a stand-alone UNE independent of loops and transport?

CA's Position on Issue

Yes. CA believes that multiplexing is a Routine Network Modification and as such it should be available in any technically feasible combination to a CLEC, even if not ordered as part of an EEL which includes transport service. An example of a non-EEL multiplexing arrangement would be a loop+multiplexing combination.

Discussion

In her Staff deposition, Kemp was asked, "You state that AT&T Florida has 21 interconnection agreements that include standalone multiplexing terms. If AT&T Florida made standalone multiplexing available in these interconnection agreements, why wouldn't AT&T Florida do so in this proceeding?" Kemp responded "Okay. It's true that standalone multiplexing does appear in some interconnection agreements. Those are—but we do have those. However, AT&T is not obligated to provide standalone multiplexing as a UNE according to the Code of Federal Regulations." Kemp was then asked, "Was AT&T Florida required the make standalone multiplexing available at the time those interconnection agreements were signed?" to which Kemp responded "I don't know." Kemp was then asked "Was there a change in law or was it required as the result of an arbitration before Florida's—the State Commission?" Kemp responded, "I don't know the timing, but the unbundled network elements are listed in the Code of Federal Regulations in Section 51.319, and multiplexing does not appear there. So I'm not certain if it ever did."

Kemp and AT&T ignore the language in the same section at 47 CFR §51.319 (7)(i), which requires an ILEC to provide Routine Network Modifications to a CLEC, and 47 CFR §51.319 (7)(ii) which specifically states that "deploying a new multiplexer or reconfiguring an existing multiplexer" are Routine Network Modifications. Thus, Kemp's statement "multiplexing does not appear there" is verifiably false.

Further, 47 CFR §51.313 "Just, reasonable and non-discriminatory terms and conditions for the provision of unbundled network elements" states, "(a) The terms and conditions pursuant to which an incumbent LEC provides access to unbundled network elements shall be offered equally to all requesting telecommunications carriers." In response to staff's first set of interrogatories (69), Kemp stated "…21 ICAs were approved between 2002 and 2008. Each of them has expired (and is no longer subject to adoption) but is effective under an "evergreen provision." Thus, Kemp has confirmed that those 21 CLECs today have access to standalone UNE multiplexing, which AT&T seeks to deny to CA. This directly violates the plain reading of 47 CFR §51.313.

CA believes that the Commission should order that the UNE multiplexing elements and prices which are currently available in those evergreen agreements be added to the pricing schedule in this proceeding.

ISSUE 59(a): If AT&T Florida accepts and installs an order for a DS1 after Communications Authority has already obtained ten DS1s in the same building, must AT&T Florida provide written notice and allow 30 days before converting to and charging for Special Access service?

ISSUE 59(b): Must AT&T Florida provide notice to Communications Authority before converting DS3 Digital UNE loops to special access for DS3 Digital UNE loops that exceed the limit of one unbundled DS3 loop to any single building?

ISSUE 59(c): For unbundled DS1 or DS3 dedicated transport circuits that AT&T Florida installs that exceed the applicable cap on a specific route, must AT&T Florida provide written notice and allow 30 days prior to conversion to Special Access?

CA's Position on all Sub-issues

Yes. CA has no way to know what AT&T considers to be a single building. Some buildings have multiple addresses, others have multiple structures which share a common street address. This fact is likely to give rise to disagreements about when CA has reached the 10 DS1 cap per-building.

Discussion

If AT&T believes that CA is not entitled to a UNE circuit on this basis, then AT&T should refuse to install the circuit as ordered and CA has dispute resolution remedies if it disagrees. If AT&T installs the circuit as ordered, it should also bill it as ordered. If AT&T later believes that CA is not entitled to the circuit, AT&T should follow the process in this agreement for conversion of the UNE circuit to a non-UNE

service. AT&T should not be entitled to unilaterally install and bill for a service that was not ordered without notice.

ISSUE 60: Should Communications Authority be prohibited from obtaining resale services for its own use or selling them to affiliates?

CA's Position on Issues

No. CA would agree with AT&T's language here except for AT&T's reference to affiliates. CA does not dispute that it may not order resale service for its own use. However, other entities which may have some affiliation with CA should be entitled to purchase resale services from CA.

Discussion

While AT&T has provided a citation for its position, that citation omits the affiliates part of AT&T's proposed language with which CA disagrees. CA has repeatedly stated that its issue with AT&T's proposed language on this issue relates to AT&T's prohibition of resale to affiliates. AT&T has cited to no regulatory or legal authority for this prohibition. CA cites in support of its position 47 CFR §51.605(e) which states "Except as provided in 51.613, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC." CA argues that this provision clearly conflicts with AT&T's proposed affiliate language.

Further, in response to staff's interrogatory 70, Pellerin stated, "There are two AT&T Florida affiliates that have ICAs that include resale services: AT&T Corp and TCG South Florida. AT&T Florida provides services to these affiliates at the wholesale discount only for the purpose of resale to end users." Thus, Pellerin has confirmed that AT&T does provide services to its affiliates for resale to others at a wholesale discount, just as CA seeks to do with its affiliates. Clearly, AT&T's proposed language in this

dispute is discriminatory since it has provided its affiliates with resale terms superior to those it seeks to impose upon CA.

Pellerin testified extensively about why AT&T's language should be adopted in her direct testimony.[177] However, each example cited by Pellerin indicated a situation where a CLEC was attempting to order resale service for its own use. The parties do not disagree upon the prohibition of CA ordering resale service for its own use. The disagreement revolves around the ability of CA to purchase resale service, then sell the service to an affiliate who is also a CLEC as part of a larger package of services, which third-party CLEC then sells the service to an end user. AT&T's broad language would prohibit this, which CA believes is an unreasonable restriction upon its use of resale services.

At hearing, Pellerin confirmed that AT&T's only basis for this provision is that the FCC's rule permits AT&T to impose "reasonable restrictions on resale."[178] Thus, the parties agree about the framing of this issue: is the restriction reasonable? Is it reasonable for AT&T to permit its own affiliates to buy resale service from it and resell to others, but not to permit CA's affiliates to buy resale service from CA and resell to others? CA believes that this is clearly discriminatory, and asks the Commission to implement its suggested language.

[177] Pellerin Direct at page 90.
[178] Hearing Transcript, page 000372 at line 6.

ISSUE 61: Which party's language regarding detailed billing should be included in the ICA?

CA's Position on Issue

CA believes its position is directly supported by FCC regulations which it has cited. AT&T has cited nothingin support of its position. CA would be unable to file billing disputes under the agreed billing disputes language without detailed billing from AT&T as required by CA's proposed language.

Discussion

As Ray testified, CA believes that detailed billing is required under FCC 99-72 and 47 CFR §64.2400-2401.[179] Although AT&T has vaguely asserted that those rules apply only to retail consumer bills,[180] it has not shown any evidence that this is the case and the plain reading of the rules does not so indicate. Further, without the detail sought by CA it would be unable to dispute incorrect charges on AT&T's bills under the agreed billing disputes language. It would be clearly unfair to CA if AT&T were permitted to bill incorrect amounts which could not be disputed by CA because of a lack of detail. In fact, the rules that CA has cited specifically state that their purpose is to provide the necessary detail for a purchaser of telecommunications service to be able to audit and dispute charges on a bill. AT&T has shown no basis for why CA should not be entitled to do that, just as consumers can.

Pellerin testified that AT&T Florida proposed language to resolve this issue, "AT&T-21STATE shall provide CLEC with the option to obtain detailed monthly billing

[179] Ray Direct, page 49 at line 14.
[180] Pellerin Direct, page 93 at line 1.

detail…"[181] CA objects to AT&T's language because it places the burden upon CA to request something to which CA is already entitled. AT&T's language does not make clear whether CA would have to request the detail every single month for every single bill or something else. CA's language makes clear that CA is entitled to billing detail for every bill, every month unless it opts out.

Pellerin was questioned by Staff on this issue at hearing:[182]

> Q: So would you be able to list all regulatory requirements for detailed billing?
> A: I could not.

Pellerin, although testifying as AT&T's billing expert, appears to be totally unfamiliar with the regulatory requirements for detailed billing in this issue. This is in sharp contrast, however, to her direct testimony, where she testified, "CA's language referencing FCC Order 99-72 is inappropriate for an ICA.[183] The FCC's billing rules established in that order (i.e. 47 CFR §§64.2400-2401) relate to retail bills to consumers, not resale bills to other carriers."

In direct testimony, Pellerin put herself forward as an expert on the subject, even though she failed to cite any basis for her assertion that the regulations applied only to consumer service. However, she admitted in response to PSC staff that she doesn't really know about detailed billing regulations at all. It is no wonder AT&T doesn't understand why CA needs the billing details each and every month.

[181] Pellerin Direct, page 92 at line 3.
[182] Hearing Transcript, page 000396 at line 11.
[183] Pellerin Direct, page 93 at line 1.

ISSUE 62(a): Should the ICA state that OS/DA services are included with resale services?

ISSUE 62(b): Does Communications Authority have the option of not ordering OS/DA service for its resale end users?

CA's Position on Issue

No. CA believes that it should not be compelled to offer AT&T OS/DA service to either its facilities-based customers or its resale customers. CA notes that AT&T retail customers have the ability to limit pay-per-use calls such as OS/DA, so CA should have the same ability.

ISSUE 63: Should Communications Authority be required to give AT&T Florida the names, addresses, and telephone numbers of Communications Authority's end user customers who wish to be omitted from directories?

Resolved.

ISSUE 64: What time interval should be required for submission of directory listing information for installation, disconnection, or change in service?

CA's Position on Issue

None. CA believes that the timing of or decision to order directory listings rests solely with the End User Subscriber, and not with CA or AT&T.

Discussion

AT&T's retail subscribers are not required to order directory listings when they order local service. AT&T also no longer publishes white pages directories at all, and it has offered no reason for this proposed requirement. Therefore, CA believes that AT&T's language is discriminatory and unreasonable. At hearing, Kemp testified:

> Q: Are you aware of any regulatory or statutory authority that requires a CLEC to provide an ILEC with its end user's directory assistance information?
> A: No, I'm not.[184]

Since AT&T has admitted that there is no legal basis for this requirement, CA believes the Commission should approve its language for issue 64.

[184] Hearing Transcript, page 000679 at line 15.

ISSUE 65: Should the ICA include Communications Authority's proposed language identifying specific circumstances under which AT&T Florida or its affiliates may or may not use Communications Authority's subscriber information for marketing or winback efforts?

CA's Position on Issue

Yes. CA believes that its language is consistent with FCC regulations regarding CPNI and slamming. AT&T has cited no legal or regulatory decision to support its position, and has not stated what it intends to use CA's subscriber information for which would be prevented by CA's language.

ISSUE 66: For each rate that Communications Authority has asked the Commission to arbitrate, what rate should be included in the ICA?

CA's Position on Issue

The Commission last reviewed the instant rates over ten years ago, at which time the ILEC was BellSouth, a much smaller entity. To the extent any of CA's proposed rates are subject to an AT&T TELRIC cost study, the Commission should order a new proceeding to investigate those rates.

Discussion

The current rates proposed by AT&T in the ICA have not been reviewed in over a decade. For rates that AT&T has identified as "market-based," CA argues that these rates should not be included in the interconnection agreement at all. In the *Local Competition Order*, the FCC described the composition of a TELRIC rate:

> The TELRIC of an element has three components, the operating expenses, the depreciation cost, and the appropriate risk-adjusted cost of capital. We conclude that an appropriate calculation of TELRIC will include a depreciation rate that reflects the true changes in economic value of an asset and a cost of capital that appropriately reflects the risks incurred by an investor. Thus, even in the presence of sunk costs, TELRIC-based prices are an appropriate pricing methodology.[185]

Since the last Commission rate case decision on the proper TELRIC costs for BellSouth, much has changed. BellSouth is now part of a 21 state ILEC spread across the country with much greater buying power and lower cost of capital. Meanwhile, AT&T's costs have shrunk as it lays off workers in massive numbers, depreciates assets installed fifteen years ago and invests very little today in network improvement as it relates to

[185] Local Competition Order at par. 703.

UNEs. In fact, much of the base of AT&T's sunk asset costs may have been fully depreciated by now.

In its depositions of AT&T's witnesses, Staff has offered a more simplistic consideration of the inputs into a UNE cost study describing an equation of cost of inputs divided by customer base. An implication can be made from that suggesting that because AT&T's costs are relatively the same, and it has fewer landline customers to spread the costs over, that the UNE rates could actually increase if such a study was conducted. If that is the case, then AT&T should not object to the Commission ordering a new UNE cost study anyway.

CA has requested AT&T fix a simple typo regarding its dark fiber pricing in Florida, but AT&T has thus far ignored it. CA has also requested that AT&T add the critical UNE BITS synchronization timing and all other UNEs for which the Commission previously set a price in the last generic docket into the ICA. The Commission should order these two issues be addressed immediately as part of this proceeding rather than require CA to wait until a future cost study docket is completed for two very important network elements that CA will need right away.

Respectfully submitted this 5th day of June, 2015.

By: /s/
Kristopher E. Twomey
Attorney for Communications Authority, Inc.

EXHIBIT 1

TCG Florida

Mike Ray, MBA, CNE, CTE

From: Pat West <PWest@telespheresoftware.com>
Sent: Monday, April 13, 2015 4:17 PM
To: 'Mike Ray, MBA, CNE, CTE'
Subject: FW: CCATM040617 ATT Mobility - Terra Nova Telecom, Inc. Claim; BAN: 382GFGD6214
Attachments: CCATM040617 _Details.xls; CCATM040617 Claim Form.xls; CCATM040617 Claim.pdf

Hello,

I am forwarding you a dispute on the LPC for ATT again.

Thanks,

Pat West
Software Support Specialist
Telesphere Software Inc.
1221 N. Russell
Missoula, Mt 59808
V: 406-541-5125
F: 406-541-5315
E: pwest@telespheresoftware.com
www.telespheresoftware.com

-----Original Message-----
From: hk783s@att.com [mailto:hk783s@att.com]
Sent: Monday, April 13, 2015 1:32 PM
To: Telesphere Cabs
Cc: hk783s@att.com; CCATM@teocosolutions.com
Subject: CCATM040617 ATT Mobility - Terra Nova Telecom, Inc. Claim; BAN: 382GFGD6214

Terra,

I am submitting this Terra Nova Telecom, Inc. claim on behalf of ATT Mobility. I have also attached the following supporting document(s):

CCATM040617 _Details.xls - Detail support for claim
CCATM040617 Claim Form.xls - Claim Form
CCATM040617 Claim.pdf - Claim Cover Letter

When replying to this email, please copy CCATM@teocosolutions.com.

If you have any questions, you may also contact me at the phone number provided below.

Thank you for your prompt attention to this matter.

Heena Khan

AT&T Mobility

Vendor	BAN	Invoice	Date Billed	Bill Amount	Dispute Amount	Short Pay Amount	Notes
Terra Nova Telecor	382GFGD6214	382G6214D041015	4/10/2015	21.58	21.58	21.58	Hi, Greeting of the day! This is to bring to your notice that we received an Invoice# 382G6214D041015 dated 04/10/2015, with due date as 04/30/2015, which shows that we have 20 days to make the payment. As per the norms that we usually follow, AT&T gets 60days from the bill date to make the payment. Would request you to provide a signed document stating AT&T would have to pay this bill within this duration, as this is an unusual case. Further, we request you to update the 28 day payment cycle on records to avoid delay of payment. Appreciate your assistance on the same. Thanks Heena Khan

EXHIBIT 2

AT&T Dispute

Mike Ray, MBA, CNE, CTE

From: HAYES, BOB <rh1472@att.com>
Sent: Monday, February 9, 2015 3:53 PM
To: Mike Ray, MBA, CNE, CTE
Cc: 'Pat West'; NERBUN, PATRICK; 'Mary Ann Behrmann'
Subject: RE: 3rd REQUEST - TNT Outstanding Invoices - 382GFGD0292

Mike,

Unfortunately we don't have a business relationship with the AT&T entity that provides your specific MPB records. I would be glad to join a three way conversation to discuss possible differences in toll discernment if you will establish the meeting. Specific to local traffic being invoiced by your company to TCG our dispute remains open. We are obligated to compensate TNT for toll traffic exchanged between our two networks and must now agree on a process to remove or identify local traffic on these access invoices. Given the main sticking point is toll discernment of the CDRs your company was provided to support access billing please let me know if you need my participation in a conversation with the AT&T entity that provides your specific MPB records.

Regards,

Bob

Bob Hayes
AT&T - Finance Billing Operations
Access Billing Management (ABM)
Associate Director
Office (770) 750-3835

From: Mike Ray, MBA, CNE, CTE [mailto:mike@tntelecom.net]
Sent: Monday, February 09, 2015 1:51 PM
To: NERBUN, PATRICK; 'Mary Ann Behrmann'
Cc: HAYES, BOB; 'Pat West'
Subject: RE: 3rd REQUEST - TNT Outstanding Invoices - 382GFGD0292

Hi Patrick,

We do not make a distinction between AT&T's various entities. AT&T (f/Bellsouth ILEC) is providing the meet point billing records from the tandem that you're sending the calls to, and our billing is based solely upon those records. We are not billing anything for calls that AT&T's MPB records identify as local.

So, there is nothing for us to fix. AT&T identified the calls as non-local in the Meet Point Billing records, therefore AT&T owes access charges for those calls. If one AT&T entity disputes the designation of those calls as non-local by the other AT&T entity, we're not going to get in the middle of that. Please contact the department within your company which is responsible for fixing that problem.

Until then, AT&T owes the charges as billed.

We do have an alternative to suggest, however. We prefer that carriers send calls to us via Neutral Tandem instead of the ILEC tandems. If your entity changes its routing to transit calls through Neutral Tandem to reach our network, then this issue is likely resolved because the AT&T entity which is allegedly mis-labelling the calls would no longer be in the middle.

Regards,

Mike

Mike Ray, MBA, CNE, CTE
Operations Director
Terra Nova Telecom, Inc.
11523 Palm Brush Trail #401
Lakewood Ranch, FL 34202
DIRECT: 941 600-0207
http://www.tntelecom.net

From: NERBUN, PATRICK [mailto:pn725j@att.com]
Sent: Monday, February 9, 2015 1:37 PM
To: Mary Ann Behrmann
Cc: HAYES, BOB; 'Pat West'; 'Mike Ray, MBA, CNE, CTE'
Subject: RE: 3rd REQUEST - TNT Outstanding Invoices - 382GFGD0292

Mary,

My position is solely based on the jurisdictional nature of the call detail records (CDRs) provided by you to support access billing to TCG. If records received from AT&T, I assume one of our ILEC entities, are not correctly marked to reflect local traffic then please refer that issue to the sending / providing organization. Is there a chance that your "mediation" process is not referencing accurate rate center information to discern local traffic? TCG doesn't have an Intercarrier Compensation Agreement (ICA) with your company so we would be obligated to compensate TNT for toll traffic exchanged between our two networks. Based on the CDRs provided it appears the majority of the traffic being invoiced to TCG is local in nature. Compensation for local traffic / reciprocal compensation would be described by the ICA you have with the tandem provider who transits the traffic between the two class five networks.

Thank you,

Patrick Nerbun

Sr Financial Analyst
Access Billing Management (ABM)
300 North Point Parkway, Alpharetta, GA 30005
(770) 750-0492
patrick.nerbun@att.com

From: Mary Ann Behrmann [mailto:maryann@tntelecom.net]
Sent: Friday, January 30, 2015 2:26 PM

To: NERBUN, PATRICK
Cc: HAYES, BOB; 'Pat West'; 'Mike Ray, MBA, CNE, CTE'
Subject: RE: 3rd REQUEST - TNT Outstanding Invoices - 382GFGD0292

Patrick,

These records come to us as 110101 records from AT&T– just standard CABS records, there are no 110131 – local records (our mediation translates them to 110131 when local). It looks like the usage for these files comes exclusively from the MD10 files we get from AT&T.

Therefore, it appears that the problem is that the records we get from AT&T show these calls as non-local, and only AT&T can fix that. It is not reasonable for AT&T to take a position that the records that it provided to us are incorrect, and thus AT&T should not have to pay for the usage billed exclusively from records provided by AT&T.

Please pay the amounts as billed, and correct the problem with AT&T's meet point billing records which will correct this issue going forward.

Thank you,

Mary Ann Behrmann
Customer Service Specialist

Terra Nova Telecom, Inc.
305-453-7100
941-600-0204 direct
941-238-9998 fax

From: NERBUN, PATRICK [mailto:pn725j@att.com]
Sent: Thursday, January 29, 2015 9:40 AM
To: Mary Ann Behrmann
Cc: HAYES, BOB
Subject: RE: 3rd REQUEST - TNT Outstanding Invoices - 382GFGD0292

Mary,

We have received the CDR analysis from our IBM support team.

The CDRs for the 1/1/2013 invoice indicate that of the 898 MOUs recorded, 715 were local minutes (80%).
The CDRs for the 7/10/2013 invoice indicate that of the 1425 MOUs recorded, 1231 were local minutes (86%).
The CDRs for the 7/10/2014 invoice indicate that of the 3119 MOUs recorded, 2314 were local minutes (74%).

Based on these findings we would request that the previously rendered invoices be corrected to reflect only toll minutes of use, as local minutes are considered bill and keep. If the previous bills cannot be revised to bill for only toll usage, we would agree to pay an average of the toll usage percentage for all previous billing, provided that the future bills are corrected to remove any local usage. If you have any questions regarding our findings please let us know and we can arrange for a call.

Thank you,

Patrick Nerbun

Sr Financial Analyst
Access Billing Management (ABM)
300 North Point Parkway, Alpharetta, GA 30005
(770) 750-0492
patrick.nerbun@att.com

Rethink Possible 

From: Mary Ann Behrmann [mailto:maryann@tntelecom.net]
Sent: Tuesday, January 27, 2015 12:40 PM
To: NERBUN, PATRICK
Subject: FW: 3rd REQUEST - TNT Outstanding Invoices - 382GFGD0292

From: Pat West [mailto:PWest@telespheresoftware.com]
Sent: Tuesday, January 27, 2015 11:35 AM
To: Mary Ann Behrmann; pn725@att.com
Subject: RE: 3rd REQUEST - TNT Outstanding Invoices - 382GFGD0292

I attached CDRs in separate files. 7/10/13 and 7/10/14 and 1/1/13. We don't have the CDRs for 10/10/12 billing any longer. We only keep them for 2 years.

Thanks,

Pat West
Software Support Specialist
Telesphere Software Inc.
1221 N. Russell
Missoula, Mt 59808
V: 406-541-5125
F: 406-541-5315
E: pwest@telespheresoftware.com
www.telespheresoftware.com

From: NERBUN, PATRICK [mailto:pn725j@att.com]
Sent: Tuesday, January 27, 2015 11:03 AM
To: Mary Ann Behrmann
Cc: HAYES, BOB
Subject: RE: 3rd REQUEST - TNT Outstanding Invoices - 382GFGD0292

Mary,

Please disregard the issue with the records being terminating only as that is not an issue. The only issue is the usage periods did not match up to the requested bill dates. Please send CDR files for each requested bill date.

Thanks,

Patrick

From: NERBUN, PATRICK
Sent: Tuesday, January 27, 2015 9:19 AM
To: 'Mary Ann Behrmann'
Cc: HAYES, BOB
Subject: RE: 3rd REQUEST - TNT Outstanding Invoices - 382GFGD0292

Mary,

The CDR's which you supplied appear to be incomplete. First they only include terminating data and secondly they only support usage from 9/30/14 thru 12/31/14. We need to verify several bill dates worth of data in order to validate the billing. Please resubmit the CDR's and if you could please send 3 separate files for each bill period requested below. Let me know if you have any questions.

Thanks,

Patrick Nerbun

Sr Financial Analyst
(770) 750-0492
patrick.nerbun@att.com
Rethink Possible

From: NERBUN, PATRICK [mailto:pn725j@att.com]
Sent: Monday, January 26, 2015 2:21 PM
To: maryann@tntelecom.net
Cc: STALLINGS, RASHAD K
Subject: RE: 3rd REQUEST - TNT Outstanding Invoices - 382GFGD0292

Mary,

With few exceptions we consider all TCG invoices for the exchange of traffic between two class five networks to be local in nature and therefore managed under a bill & keep compensation model. These invoices fall under CIC 0292, TCG and are not considered valid to pay unless CDR analysis can be done to verify the usage billed does not include any local billing. If you believe the invoices do not include any local traffic you can submit CDR's for analysis. We would request CDRs to support the usage billed on the 10/10/12, 7/10/13 and 7/10/14 bill dates. We would appreciate the records in EMI category 10 or 11 format. Please save the records to a text file with no delimiters. A carriage return should be placed at the end of each record. Our e-mail will block ZIP files so if you chose to send via e-mail, please change the extension to ZAP and we will re-convert. If you prefer, the data can be provided by a CD sent to the following address:

ATTN: Patrick Nerbun
AT&T
300 North Point Parkway
Alpharetta, GA 30005-4136

Please let me know if you have any questions.

Thank you,

Patrick Nerbun

Sr Financial Analyst
Access Billing Management (ABM)

300 North Point Parkway, Alpharetta, GA 30005
(770) 750-0492
patrick.nerbun@att.com

Rethink Possible 

From: STALLINGS, RASHAD K
Sent: Monday, January 26, 2015 2:13 PM
To: NERBUN, PATRICK
Cc: maryann@tntelecom.net
Subject: RE: 3rd REQUEST - TNT Outstanding Invoices - 382GFGD0292

Patrick,

This appears to be a C6 company.

Rashad

From: AGARWAL, VIBHU
Sent: Tuesday, December 30, 2014 11:50 AM
To: maryann@tntelecom.net
Cc: STALLINGS, RASHAD K
Subject: 3rd REQUEST - TNT Outstanding Invoices - 382GFGD0292
Importance: High

Hi Mary

AT&T has reassigned responsibility for its CLEC access payables process to a new work group effective October 1, 2013. All inquiries concerning October 1, 2013 billing forward will be managed by this new work team. Your new contact is Rashad Stallings who can be reached on (770) 750-04555, I also copied him to this message.

Regards
Vibhu Agarwal
AT&T Global Network Services
Access Billing Management
India : 91 120 66 20161
UK : 44 2034785816 Ext. 20161
E-mail: va400u@att.com

Escalation level :

I. Sneha Chowdhry- sc8496@att.com
II. Gurvinder Walia- gw9526@att.com
III. Jaro Kozlovsky - jk4531@att.com
Please ensure all Invoice copies are sent to – g13142@att.com

---

From: Mary Ann Behrmann [maryann@tntelecom.net]
Sent: Tuesday, December 30, 2014 09:53 PM
To: CBM_ACC CLEC SW_DED
Subject: 3rd REQUEST - TNT Outstanding Invoices - 382GFGD0292

Can you please check the payment status of the following invoices, we have not received payment on any of these invoices have been outstanding for awhile.

CIC	Carrier	BAN	Invoice	Bill Date	Bill Thru Date	Charges	Payments	Adjustments	To
0292	**Teleport Communications Group, Inc. Connectivity Billing Management 300 North Point Parkway Systems Support/Bldg 600-FLOC 64042 Alpharetta, GA 30005** (631)264-6392 Ext. 20119								
		382GFGD0292							
			382G-0292D-101012	10/10/2012	9/30/2012	$147.68	$0.00	$0.00	
			382G-0292D-111012	11/10/2012	10/31/2012	$53.09	$0.00	$0.00	
			382G-0292D-121012	12/10/2012	11/30/2012	$46.56	$0.00	$0.00	
			382G-0292D-011013	1/10/2013	12/31/2012	$36.46	$0.00	$0.00	
			382G-0292D-021013	2/10/2013	1/31/2013	$19.54	$0.00	$0.00	
			382G-0292D-031013	3/10/2013	2/28/2013	$24.87	$0.00	$0.00	
			382G-0292D-041013	4/10/2013	3/31/2013	$23.10	$0.00	$0.00	
			382G-0292D-051013	5/10/2013	4/30/2013	$29.55	$0.00	$0.00	
			382G-0292D-061013	6/10/2013	5/31/2013	$25.17	$0.00	$0.00	
			382G-0292D-071013	7/10/2013	6/30/2013	$31.80	$0.00	$0.00	
			382G-0292D-081013	8/10/2013	7/31/2013	$4.50	$0.00	$0.00	
			382G-0292D-091013	9/10/2013	8/31/2013	$3.93	$0.00	$0.00	
			382G-0292D-101013	10/10/2013	9/30/2013	$4.25	$0.00	$0.00	
			382G-0292D-111013	11/10/2013	10/31/2013	$4.81	$2.48	$0.00	
			382G-0292D-121013	12/10/2013	11/30/2013	$3.82	$0.00	$0.00	
			382G-0292D-011014	1/10/2014	12/31/2013	$3.85	$0.00	$0.00	
			382G-0292D-021014	2/10/2014	1/31/2014	$4.46	$0.00	$0.00	
			382G-0292D-031014	3/10/2014	2/28/2014	$4.59	$0.00	$0.00	
			382G-0292D-041014	4/10/2014	3/31/2014	$5.42	$0.00	$0.00	
			382G-0292D-071014	7/10/2014	6/30/2014	$22.97	$0.00	$0.00	
								BAN Total:	
								Grand Total:	

Please let me know if you need copies of any of these invoices or anything that I can do to expedite the payment of these outstanding invoices.

Thank you for your assistance.

Mary Ann Behrmann
Customer Service Specialist

Terra Nova Telecom, Inc.
305-453-7100
941-600-0204 direct
941-238-9998 fax

EXHIBIT 3

SCREENSHOT OF CREDIT CARD DISPUTE OPTIONS

Dispute a Merchant Charge

We're sorry you're having problems regarding a charge on your Capital One card. We know it can be frustrating for you. But we want to make the process of disputing this charge as easy as possible.

Step 1: Double-check your charge

In many cases, disputed charges turn out to be legitimate charges that people simply don't recognize or remember. Before you dispute a charge, we recommend that you do a quick double-check...

- **Has the charge posted to your account?** Before disputing a charge, please check to see if the charge has been posted to your account. Capital One can't help you with a charge dispute until the charge has been posted.
  One way to check for the charge is to look at your account statements online. If you don't have online access, you can easily enroll in Online Banking by following the instructions prompted here. Otherwise, you can check your most recent paper statement for the charge.
- **Don't recognize the charge?** Check with other persons authorized to use the account to make sure they didn't make the charge.
- **Don't recognize the amount?** Check your receipts—it's easy to confuse similar charges or to forget about tips.

Step 2: Consider the circumstances

Unable to resolve it with the merchant? There are many dispute situations, here are some typical situations where we can help you dispute a charge:

Step 3: Get started

If you're ready to dispute a charge, contact us using one of four different ways:

Contact us

Phone	1-800-CAPITAL (1-800-227-4825)
Online	1. Sign in to your account 2. Go to the **"Services"** tab 3. Go to **"Dispute a Charge"** under the Customer Service heading
Fax	1-888-435-4217
Mail	Capital One PO Box 30279 Salt Lake City, UT 84130-0279

Tell Me More

- What will Capital One do with my information?
- How long will the process take?

Questions?

Call us anytime at 1-800-CAPITAL (1-800-227-4825)

EXHIBIT 4

Certified Letter from AT&T Notices Management

Notices Manager FUSF2015
AT&T Wholesale
311 South Akard, 9th Floor
Dallas, TX 75202

7014 2120 0001 4381 5607

ZIP 75202
02 1W
0001379539 APR 03 2015
$ 008.24⁰

Willima Mikalson
Terra Nova Telecom, Inc
11523 Palm Brush Trail Suit 401
Lakewood Ranch, FL 34202