

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Rebuttal Testimony of Scott McPhee
On Behalf of AT&T Florida

March 23, 2015

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

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1

I. INTRODUCTION

2 **Q. ARE YOU THE SAME SCOTT MCPHEE WHO SUBMITTED DIRECT**
3 **TESTIMONY ON BEHALF OF AT&T FLORID ON FEBRUARY 16?**

4 A. Yes.

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

6 A. I respond to the Direct Testimony of Mike Ray on Behalf of Communications
7 Authority, Inc. (“Ray Direct”) on the issues I addressed in my direct testimony.

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

10 A. Yes. I have the following exhibits:

11 Exhibit SM-1 CA Response to AT&T Florida Interrogatory 84

12 Exhibit SM-2 CA Response to AT&T Florida Request for Admission 69

13 Exhibit SM-3 CA Response to AT&T Florida Interrogatory 97

14

15

II. DISCUSSION OF ISSUES

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

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

22 **Q. WHAT DOES MR. RAY SAY IN SUPPORT OF CA’S POSITION ON ISSUE**
23 **33A?**

24 A. Very little. Mr. Ray says only that “AT&T should exempt CA from taxes for which
25 CA has provided the appropriate documentation that it pays the taxes directly to the

1 government authority.” Ray Direct at 32, lines 20-21. This utterly fails to come to
2 grips with the issue.

3 **Q. WHY DO YOU SAY THAT?**

4 A. Because all Mr. Ray’s assertion amounts to is that the same tax should not be paid by
5 both CA and AT&T Florida, which is obvious and is not what this issue is about.

6 **Q. WHAT IS THE CRUX OF THE ISSUE?**

7 A. The real question is whether AT&T Florida should bill and collect the taxes on behalf
8 of the reseller (CA in this instance), and then remit those taxes to the appropriate
9 governmental authority, as AT&T Florida maintains it should. Mr. Ray says nothing
10 about that question.

11 **Q. WHAT IS THE ANSWER TO THAT QUESTION?**

12 A. As I explained in my direct testimony, AT&T Florida should bill and collect the taxes
13 and then remit the taxes to the appropriate governmental authority. In fact, as I
14 explained in my direct testimony (at p. 8, line 14 – p. 9, line 7), the parties have
15 already agreed on contract language that provides that AT&T Florida will remit the
16 taxes to the governmental authority and pass the charges through to CA. And as I
17 also explained (*id.* at 9, lines 8-20), CA’s proposed language for GT&C sections 37.3
18 and 37.4 would be unreasonable even if it were not inconsistent with language on
19 which the parties have already agreed, because it would require AT&T Florida to
20 revamp its billing system to accommodate CA alone.

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

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

7 **Q. IN YOUR DIRECT TESTIMONY, YOU EXPLAINED (AT P. 12, LINES 16-23)**
8 **THAT THE ASSERTION IN CA’S COMMENTS THAT “AT&T DOES NOT**
9 **PROVIDE ANY WAY FOR CA TO DETERMINE THE COUNTY FOR EACH**
10 **RESALE LINE” MADE NO SENSE BECAUSE CA MUST KNOW WHERE**
11 **ITS RESALE CUSTOMERS RESIDE. DOES MR. RAY’S DIRECT**
12 **TESTIMONY MAKE THE SAME ASSERTION THAT CA MADE IN ITS**
13 **COMMENTS?**

14 A. Yes. Mr. Ray states, “AT&T does not provide any way for CA to determine the
15 county for each resale line for which AT&T bills the E911 surcharge on its bill.
16 Therefore, it is impossible for CA to deduct the resale lines from its monthly filings
17 and payments to the Florida 911 Board” Ray Direct at 33, lines 7-10.

18 **Q. ARE YOU STILL SURE, AS YOU SAID IN YOUR DIRECT TESTIMONY,**
19 **THAT CA MUST KNOW WHERE ITS RESALE CUSTOMERS RESIDE,**
20 **AND DOESN’T NEED TO RELY ON AT&T FLORIDA FOR THAT**
21 **INFORMATION?**

22 A. Yes. And CA has confirmed that I was correct about that. In its Response to AT&T
23 Florida’s Interrogatory 84 (Exhibit SM-1), CA stated, “CA can identify where its
24 customers are and which county they are in.” Therefore, and contrary to Mr. Ray’s
25 assertion (Ray Direct at p. 33, lines 9-10), it *is* possible for CA to “deduct the resale
26 lines from its monthly filings and payments to the Florida 911 board which are
27 county-specific.” By doing so, like every other CLEC that purchases AT&T
28 Florida’s resale services, CA would eliminate its purported concern about possible
29 double-payments to the Florida 911 Board. Additionally, CA surely knows whether it

1 is serving an end user via its own facilities (*i.e.*, CA’s own switch) or via resale of
2 AT&T Florida’s service.

3 **Q. DOES AT&T FLORIDA’S LANGUAGE “REQUIRE CA TO DOUBLE-PAY**
4 **FOR ITS E911 SURCHARGES EACH MONTH” AS MR. RAY ALLEGES (AT**
5 **P. 33, LINES 11, 12)?**

6 A. Absolutely not. Since CA knows the location of its end users, CA is clearly capable
7 of remitting E911 surcharges for only its facilities-based customers. Furthermore, as
8 my direct testimony describes (at p. 13, line 7 – p. 14, line 8), there are clear
9 guidelines delineating each party’s responsibilities with respect to remitting E911
10 surcharges and fees. AT&T Florida’s process of remitting E911 surcharges for
11 resale services provided to all other carriers in the state of Florida has not resulted in
12 those other carriers being “required” to double-pay its E911 surcharges.

13 **ISSUE 34: SHOULD COMMUNICATIONS AUTHORITY BE REQUIRED TO**
14 **INTERCONNECT WITH AT&T FLORIDA’S E911 SELECTIVE**
15 **ROUTER?**

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

17 **Q. IN SUPPORT OF CA’S POSITION THAT CA SHOULD BE ALLOWED TO**
18 **CHOOSE FROM AMONG COMPETING PROVIDERS OF 911 SERVICES,**
19 **MR. RAY STATES THAT SEVERAL COUNTIES NOW DIRECT CLECS TO**
20 **INTERCONNECT WITH INTRADO, RATHER THAN AT&T FLORIDA**
21 **FOR 911 SERVICE. (RAY DIRECT AT P. 34, LINES 4-5.) DOES THAT**
22 **UNDERMINE AT&T FLORIDA’S POSITION?**

23 A. No – it reveals that CA misunderstands AT&T Florida’s position. Here are the
24 basics:

25 • Some Florida E911 customers (governmental authorities or PSAPs) contract
26 with AT&T Florida to furnish their E911 service, and other Florida E911
27 customers contract with other providers, such as Intrado, to furnish their E911
28 service.

- 1 • In areas where the E911 customer contracts with a provider of E911 service
2 other than AT&T Florida (such as the counties to which Mr. Ray refers), then
3 of course CA should interconnect with that provider, rather than with AT&T
4 Florida, for the routing of CA's end user customers' E911 calls to the PSAP in
5 that area.
- 6 • In areas where the E911 customer contracts with AT&T Florida to provide
7 911 service, on the other hand, the E911 customer has no contract with
8 another provider (*e.g.*, Intrado) to provide that service. Consequently, all
9 E911 calls in such areas must be routed to the PSAP through AT&T Florida's
10 selective router.
- 11 • In this scenario, where all E911 calls must be routed through AT&T Florida's
12 selective router, CA apparently wants to interconnect with a third-party
13 aggregator for the transmission of CA's end users' E911 calls. However, the
14 aggregator would merely function as a middleman between CA and AT&T
15 Florida's E911 tandem – because, ultimately, CA's end users E911 calls
16 would still have to be routed to the PSAP by AT&T Florida's selective router.
- 17 • Moreover, the introduction of the third-party aggregator into the call path
18 would imperil the reliability of the E911 system. *See* my direct testimony at
19 p. 17, line 12 – p. 29, line 2.
- 20 • To ensure against that danger, the Commission should approve AT&T
21 Florida's proposed language, which requires CA to directly connect with
22 AT&T Florida's Selective Router in those areas where AT&T Florida is the
23 E911 agency's designated service provider, rather than sending the traffic
24 through an aggregator to AT&T Florida.

25 **Q. YOU BEGAN BY SAYING THAT MR. RAY'S TESTIMONY REVEALS**
26 **THAT CA MISUNDERSTANDS AT&T FLORIDA'S POSITION. WHAT IS**
27 **THE MISUNDERSTANDING?**

28 A. Mr. Ray seems to think that AT&T Florida wants CA to interconnect with AT&T
29 Florida for the transmission of E911 calls even in areas where the E911 customer –
30 the county, for example – has designated a provider other than AT&T Florida as the
31 E911 service provider. That is not the case. AT&T Florida's position is simply that
32 in those areas where the E911 customer has designed AT&T Florida as the E911
33 service provider, CA should be required to directly connect with AT&T Florida's

1 selective router *rather than sending its traffic to AT&T Florida through a third party*
2 *aggregator of E911 traffic.*

3 **Q. CAN YOU TIE WHAT YOU HAVE SAID ABOUT THIS ISSUE TO THE**
4 **DISPUTED CONTRACT LANGUAGE?**

5 A. Yes. The E911 Attachment includes a number of provisions that describe the routing
6 of E911 traffic. All the language in those provisions is agreed, except that CA
7 proposes to insert the words “*Where it [CA] chooses to purchase E911 service from*
8 *AT&T-2ISTATE*” in front of each provision. That language should be rejected
9 because it is the E911 customer (the county or the PSAP) – not CA – that chooses the
10 company that will be E911 service provider in a particular area. In those areas where
11 the E911 customer has chosen AT&T Florida, CA should be required to respect that
12 choice by routing its end users’ E911 calls directly to AT&T Florida.

13 **Q. HOW DO YOU RESPOND TO MR. RAY’S CLAIMS THAT AT&T**
14 **FLORIDA’S 911 INFRASTRUCTURE IS “ANTIQUATED” AND**
15 **“INFERIOR” (RAY DIRECT AT P. 33, LINES 20, 23)?**

16 A. AT&T Florida does not agree with those claims. Much more important, though, the
17 claims are irrelevant, because as I have explained, the issue here is what should
18 happen in areas where the E911 customer has chosen AT&T Florida as its provider of
19 E911 services, and where the traffic will therefore, by definition, make use of AT&T
20 Florida’s E911 network.

21
22 **ISSUE 39a: SHOULD THE ICA STATE THAT COMMUNICATIONS**
23 **AUTHORITY MAY USE A THIRD PARTY TANDEM PROVIDER TO**
24 **EXCHANGE TRAFFIC WITH THIRD PARTY CARRIERS?**

25 **Affected Contract Provisions: Network Interconnection Att. § 4.1.6**

1 **Q. ALL MR. RAY SAID IN HIS DIRECT TESTIMONY ON THIS ISSUE (AT P.**
2 **36, LINES16-17) IS THAT “CA DESIRES TO CLARIFY THAT IT IS NOT**
3 **REQUIRED TO USE AT&T’S TANDEM TO EXCHANGE CALL TRAFFIC**
4 **WITH OTHER CARRIERS AND MAY INSTEAD USE ANY THIRD-PARTY**
5 **TANDEM PROVIDER AT CA’S OPTION.” DOES AT&T FLORIDA AGREE**
6 **THAT CA MAY USE THIRD PARTY TANDEM PROVIDERS TO**
7 **“EXCHANGE CALL TRAFFIC WITH OTHER CARRIERS”?**

8 A. That depends on what CA means by “other carriers.” As the principles I set forth in
9 my direct testimony (at p. 20, lines 4-27) make clear, AT&T Florida agrees that CA is
10 free to use a third party tandem provider for the exchange of traffic with carriers *other*
11 *than AT&T Florida*. But as those principles also make clear, if CA is saying it is
12 entitled to use a third party tandem provider to exchange traffic with other carriers
13 *including AT&T Florida*, then CA is wrong – in part – because CA cannot require
14 AT&T Florida to send traffic to CA through a third party tandem provider.

15 **Q. IN THAT CASE, WOULD AT&T FLORIDA BE WILLING TO ACCEPT**
16 **CA’S PROPOSED CONTRACT LANGUAGE IF CA REPRESENTS THAT IT**
17 **MEANS ONLY THAT CA CAN USE A THIRD PARTY TANDEM**
18 **PROVIDER TO EXCHANGE CALLS WITH CARRIERS OTHER THAN**
19 **AT&T FLORIDA?**

20 A. No, because that is not what CA’s proposed contract language says, and AT&T
21 Florida cannot accept contract language that is unacceptable on its face based on
22 CA’s representation about how it would interpret the language. In fact, agreed
23 language in GT&C section 48.1.1 states, “The terms contained in this Agreement and
24 any Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement
25 between the Parties with respect to the subject matter hereof, superseding all prior
26 understandings, proposals and other communications, oral or written between the

1 Parties during the negotiations of this Agreement and through the execution and/or
2 Effective Date of this Agreement.”

3 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 39a?**

4 A. The Commission should reject CA’s proposed language for Network Interconnection
5 section 4.1.6. The language is ambiguous. If it is read to mean that CA can exchange
6 traffic with carriers other than AT&T Florida by using a third party tandem provider –
7 and/or that CA can send traffic to AT&T Florida through a third party tandem
8 provider – there is no need for the language, because nothing in the ICA suggests
9 otherwise. If, on the other hand, the language is read to mean anything beyond that
10 (and the language is certainly susceptible to such a reading), then the language is
11 contrary to law. In addition to rejecting CA’s proposed language, the Commission
12 should, if it sees fit, direct the parties to include in section 4.1.6 the alternative
13 language I proposed in my direct testimony, at page 24, lines 7-14.

14 **Q. IS THERE ANOTHER REASON THAT THE COMMISSION SHOULD**
15 **REJECT CA’S PROPOSED LANGUAGE FOR NETWORK**
16 **INTERCONNECTION SECTION 4.1.6?**

17 A. Yes. The parties recently resolved Issue 39(b) by agreeing on language, set forth
18 below, that cares for any legitimate concern of CA that CA sought to address with its
19 proposed language for section 4.1.6. Thus, on top of the other reasons I have
20 provided for rejecting that language, the language would now be redundant.

1 **ISSUE 39b: SHOULD THE ICA PROVIDE THAT EITHER PARTY MAY**
2 **DESIGNATE A THIRD PARTY TANDEM AS THE LOCAL HOMING**
3 **TANDEM FOR ITS TERMINATING TRAFFIC BETWEEN THE**
4 **PARTIES' SWITCHES THAT ARE BOTH CONNECTED TO THAT**
5 **TANDEM?**

6 **Affected Contract Provisions: Network Interconnection Att. § 4.3.1**

7 **Q. WHAT IS THE STATUS OF ISSUE 39b?**

8 A. The parties resolved Issue 39(b) on March 20, 2015 by agreeing that the following
9 language will be included in the Network Interconnection attachment:

10 If a third-party tandem connects the switches operated by both parties,
11 then either party shall be entitled to designate such third party tandem as
12 the Local Homing Tandem for its terminating traffic between the
13 switches which are connected by the third party tandem, and neither
14 party shall be obligated to pay the other for tandem switching provided
15 by the third party.

16

17 **ISSUE 41: SHOULD THE ICA INCLUDE COMMUNICATION AUTHORITY'S**
18 **LANGUAGE PROVIDING FOR SIP VOICE-OVER-IP TRUNK**
19 **GROUPS?**

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

21 **Q. DO YOU HAVE ANY RESPONSE TO MR. RAY'S DIRECT TESTIMONY ON**
22 **THIS ISSUE?**

23 A. Yes. The testimony is remarkably inadequate, because it fails to address the many
24 reasons that CA's proposed language is contrary to law, particularly including the fact
25 that the language is directly contrary to the FCC's All-or-Nothing Rule, as I explained
26 in my direct testimony at p. 34, line 12 – p. 35, line 14, and that the parties' relations
27 with respect to the matters covered by their ICA are governed *solely* by the ICA,
28 which I also explained in my direct testimony, at p. 35, line 15 – p. 37, line 4.

1 **Q. BUT CA DID NOT KNOW THAT IT WOULD NEED TO ADDRESS THOSE**
2 **POINTS UNTIL IT SAW YOUR DIRECT TESTIMONY, DID IT?**

3 A. Of course it did. AT&T Florida forcefully made those points in the DPL it filed on
4 September 15, 2014 – five months before Mr. Ray’s direct testimony was filed. In its
5 position statement on this issue, AT&T Florida stated:

6 CA’s proposal is directly contrary to the principle underlying the FCC’s
7 “all or nothing rule” for adoptions of ICAs under 47 U.S.C. § 252(i).
8 Under that rule, a carrier cannot adopt just part of an existing ICA; if it
9 wants to adopt provisions in an ICA, the carrier must take the entire
10 ICA. This principle recognizes that when the ICA was negotiated, there
11 may have been gives and takes that resulted in some provisions being
12 more favorable to the CLEC, and other provisions being less favorable
13 to the CLEC, than the law otherwise requires. CA’s proposal flies in the
14 face of this principle, because it would allow CA to lay claim to (purely
15 hypothetical) IP trunking provisions in another carrier’s (purely
16 hypothetical) ICA without accepting the remainder of that carrier’s ICA.

17 CA’s proposal is also objectionable because it would require AT&T
18 Florida to provide IP-based interconnection trunking to CA without an
19 amendment setting forth even the most basic terms and conditions for
20 the provision of that service.

21 CA’s failure to address these points in its direct testimony can only mean that CA has
22 no answer to them.

23 **Q. DOES CA ACKNOWLEDGE THAT UNDER THE FCC’S ALL OR NOTHING**
24 **RULE, IT CANNOT ADOPT ONLY PART OF ANOTHER CLEC’S ICA**
25 **WITH AT&T FLORIDA?**

26 A. Yes. AT&T Florida made the following discovery request, and CA gave the
27 following response:

28 Issue 41: Admit that under 47 C.F.R. § 51.809(a), a CLEC is entitled to
29 adopt an existing state commission-approved ICA in its entirety, but is
30 not entitled to adopt only part of an existing state commission-approved
31 ICA.
32

1 CA Response: Admitted.¹

2 **Q. HOW DO YOU RESPOND TO MR. RAY’S TESTIMONY THAT “CA**
3 **BELIEVES THAT AT&T ALREADY PROVIDES SIP INTERCONNECTION**
4 **TO OTHERS BUT IS DENYING THE SAME TO CA UNDER THIS**
5 **AGREEMENT”?**

6 A. I question whether CA actually believes that. In the same DPL position statement I
7 quoted above, AT&T Florida stated, “AT&T Florida currently does not offer, install
8 or provide interconnection trunking using SIP Voice-over IP or Voice-using IP to any
9 entity; does not have the capability to do so; and has no intention to do so unless there
10 is a change in existing law, which does not require AT&T Florida to provide IP
11 interconnection.” Essentially, Mr. Ray is saying that that statement by AT&T Florida
12 was false. It was not false, and Mr. Ray can have no legitimate basis for saying CA
13 believes otherwise.

14 **Q. DID AT&T FLORIDA ASK CA THE BASIS FOR MR. RAY’S STATEMENT?**

15 A. Yes, and the answer makes clear that there is no basis for CA’s purported belief that
16 AT&T Florida already provides SIP interconnection to others. When asked who
17 those “others” were, CA answered, “I do not have an exhaustive list of carriers to
18 whom AT&T is interconnected via SIP, nor do I know which AT&T affiliate is
19 interconnecting via SIP.” CA Response to AT&T Florida Interrogatory 97, Exhibit
20 SM-3. That answer makes clear that CA cannot identify a single carrier to which
21 AT&T Florida provides SIP interconnection. Thus, there is no basis for CA’s

¹ Exhibit SM-2.

1 purported belief. The simple fact of the matter is that AT&T Florida does not provide
2 SIP interconnection to any carrier.

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

4 A. It should reject CA's proposed language for Issue 41 for all the reasons set forth in
5 my direct testimony.

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

7 A. Yes.

84. Issue 33b: The Ray Testimony states (at p. 33, lines 7-9), “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.” Explain why AT&T Florida needs to provide that information in order for CA to know the county of residence of each of its resale customers whose line is subject to E911 surcharges. If you cannot determine the county of residence of each of your resale customers based upon your own records, your response should include an explanation of why that is so.

CA Response: AT&T Florida would need to identify the counties that it is charging 911 taxes on behalf of in order for CA to deduct those taxes which it pays directly to the county. AT&T does not itemize 911 taxes on its bills, so CA would not have any way to calculate which taxes charged by AT&T were remitted to which counties. One resale bill from AT&T could contain service in many different counties which are not identified. CA can identify where its customers are and which county they are in. However, the charges for 911 service contemplate a maximum charge per location to the end user, regardless of how each line is delivered. Since CA’s service is a combination of facilities-based service and resale service, it is not feasible for CA to divine each month what amounts AT&T collected for each county and then attempt to deduct that from CA’s remittance to the county with those maximums in place. The easiest solution for all parties would be for AT&T, like Verizon and CenturyLink in Florida to exempt CA from the 911 taxes which CA remits directly to the state for each county.

69. Issue 41: Admit that under 47 C.F.R. § 51.809(a), a CLEC is entitled to adopt an existing state commission-approved ICA in its entirety, but is not entitled to adopt only part of an existing state commission-approved ICA.

CA Response: Admitted.

97. Issue 41: Identify the “others” to which you believe “AT&T already provides SIP interconnection according to the Ray Testimony (at p. 38, lines 12-13) and state the basis for your belief.

CA Response: I do not have an exhaustive list of carriers to whom AT&T is interconnected via SIP, nor do I know which AT&T affiliate is interconnecting via SIP. However, I know that AT&T is capable of such an interconnection from direct personal experience. Further details are protected by a non-disclosure agreement with AT&T, and can be provided under protective order.