

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Communications Authority,  
Inc. for arbitration of Section 252(b)  
interconnection agreement with BellSouth  
Telecommunications, LLC d/b/a AT&T  
Florida.

DOCKET NO. 140156-TP  
ORDER NO. PSC-15-0160-PHO-TP  
ISSUED: April 30, 2015

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on April 21, 2015, in Tallahassee, Florida, before Commissioner Ronald A. Brisé, as Prehearing Officer.

APPEARANCES:

KRISTOPHER E. TWOMEY, ESQUIRE, 1725 I Street NW, Suite 300,  
Washington, D.C. 20006  
On behalf of Communications Authority, Inc. (CA).

TRACY HATCH ESQUIRE, 150 S. Monroe Street, Suite 400, Tallahassee,  
Florida 32301 and DENNIS G. FRIEDMAN, ESQUIRE, Mayer Brown LLP, 71  
S. Wacker Drive, Chicago, IL 60606  
On behalf of BellSouth Telecommunications, LLC d/b/a AT&T Florida (AT&T  
Florida).

LEE ENG TAN and LESLIE AMES, ESQUIRES, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, Deputy General Counsel, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Advisor to the Florida Public Service Commission.

**PREHEARING ORDER**

I. CASE BACKGROUND

On August 20, 2014, Communications Authority (CA) filed a Petition for Arbitration seeking resolution of certain issues arising between BellSouth Telecommunications, LLC d/b/a/AT&T Florida (AT&T Florida) and CA in negotiating an interconnection agreement. Order No. PSC-14-0700-PCO-TP, issued December 19, 2014, established controlling dates and set an administrative hearing for May 6-8, 2015.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 364, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, 25-24 and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 364.183, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

#### V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

Each witness' direct and rebuttal testimony will be heard at the same time.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct and Rebuttal</u>		
Mike Ray	CA	1-66
Patricia H. Pellerin	AT&T Florida	11, 13a, 13b, 13c, 13d, 14a, 14b, 15-20, 22a, 22b, 23-25, 27, 29-30, 32, 35-37, 43, 45, 60-61 and 66
Scott McPhee	AT&T Florida	33a, 33b, 34, and 41
Mark Neinast	AT&T Florida	38, 40 and 46(i)
Susan Kemp	AT&T Florida	1-10, 44, 48, 50-51, 53-59, 62, 64-66

VII. BASIC POSITIONS

**CA:** CA believes its proposed language for all outstanding issues should be approved by the Commission in its final order in the proceeding.

**AT&T FLORIDA:** The instant arbitration proceeding is governed by the Telecom Act of 1996 ("Telecom Act" or "Act"), the associated rules of the Federal Communications Commission ("FCC") and its implementing orders. While the scope of the issues in this arbitration may be the broadest ever brought to the Commission in a single arbitration, the ultimate goal of this proceeding is always, to achieve specific contract language that will be incorporated into the interconnections agreement ("ICA") that will govern the parties' behaviors. To that end the Commission's decisions must be guided by the Telecom Act and the FCC's rules and orders. For each issue identified and defined below, AT&T Florida's positions and the associated contract language, are consistently faithful to the controlling federal law and Commission approved policies and practice. Communications Authority's positions in this proceeding are essentially a 'wish list' of what it would like the law to be, not what it is. The Commission should not be distracted and should keep its focus on the Telecom Act and the FCC's rules and orders just as AT&T Florida has done.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

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

**POSITIONS**

**CA:** Yes. CA believes that it is well established that a CLEC is entitled to use UNEs to provide any service it desires to its end-users, including Telecommunications Service and Information Service. Upon information and belief, AT&T Florida's affiliate, Teleport Communications Group ("TCG"), is a CLEC in Florida and uses UNE facilities provided by AT&T Florida for the provision of information services with no telecommunications service component. This allows AT&T to avoid paying federal universal service fund taxes on the Information Services as telecommunications. CA is aware that AT&T uses its affiliate TCG at least in part to provide its U-Verse service in Florida, even though AT&T has testified that AT&T Florida solely provides the U-Verse services. When CA asked AT&T to identify its affiliates involve in providing these services in Florida and which affiliate provides which service, AT&T refused. CA believes that AT&T's proposed restriction is anti-competitive and not supported by the Act or Commission regulations.

**AT&T FLORIDA:** No. Section 251(c)(3) of the Telecommunications Act of 1996 ("1996 Act" or "Act") provides that access to UNEs is for the provision of a telecommunications service. The law is clear that information services are not telecommunications services, and that AT&T Florida has no obligation to provide a UNE to CA solely for the provision of information services. However, If CA obtains a UNE from AT&T Florida for the provision of a telecommunications service, CA may also use that UNE for the provision of information services. CA's proposed language is contrary to law, because it would require AT&T Florida to provide UNEs for the provision of information services alone.

**STAFF:** No position.

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

**POSITIONS**

**CA:**                   Yes. AT&T requires CA to hire an AT&T Approved Installation Supplier (AIS) for constructing its collocations within AT&T Central Offices. In many areas, AT&T has approved a very limited number of AIS contractors, and has refused to permit, in its sole discretion, 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 far greater than the actual value of the work required. This creates an artificial barrier to entry for CLECs, imposed by AT&T. CA should be entitled to become certified as an AIS upon the same terms and conditions as any other AIS for the purpose of installing its own collocations, or AT&T should be required to provide the construction elements to CA at TELRIC-based prices if it desires to deny CA access to become an AIS.

**AT&T FLORIDA:** No, CA is not “entitled” to become a Tier 1 AIS. CA may apply to become an AIS in the same manner as anyone else and, like everyone else, must meet certain criteria and provide specific information in its application. This process, and the associated timeline, are identical for any applicant seeking to become an AIS. Upon approval, an AIS may perform work functions according to the level of its certification.

To the extent that CA wants to perform work within its own collocation space, it can apply to be a Tier 2 AIS, which requires only attendance at a one-day safety training course.

**STAFF:**               No position.

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

**POSITIONS**

**CA:** CA believes that AT&T should not be entitled to charge application fees, review fees, or any other fees if CA does not require or order anything from AT&T but simply submits updated equipment records to AT&T as required by this Agreement when changing CA's own equipment. AT&T has refused to describe its costs incurred as a result of CA installing subsequent equipment.

**AT&T FLORIDA:** The parties have agreed in Collocation section 7.1 that CA will pay an initial Planning/Application Fee when it submits a complete collocation application. AT&T Florida will not charge an additional or separate fee pursuant to section 3.17.3.1 when CA supplements its original All Equipment List with new equipment. AT&T Florida's proposed language succinctly and accurately reflects that. CA's language, on the other hand, is vague and could be misinterpreted to override the parties' agreement regarding imposition of the application fee.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** No. AT&T's language seeks to give AT&T the ability to unilaterally take action against CA which could severely harm CA (and may threaten CA's very existence), without first providing an opportunity for CA to contest the assertion that it is in default. The Draft ICA has a dispute resolution provision available to both parties, but AT&T's language seeks to bypass its obligation to invoke that provision to resolve disputes in good faith and to instead allow it to act unilaterally without oversight or review. CA believes that this is anti-competitive and arbitrary; AT&T has not alleged or shown that the dispute resolution process is not adequate to address this concern. The Commission has recently approved an accelerated dispute resolution process which would be available to either party for resolution of time-sensitive issues.

**AT&T FLORIDA:** Yes. AT&T Florida should not be required to wait until the conclusion of a CA-initiated dispute resolution proceeding to reclaim its collocation space when CA materially defaults on its obligations. AT&T Florida's repossession of its space will not occur until 60 days after CA's receipt of

written notice from AT&T Florida and only after CA has had the opportunity to cure its default. If CA fails to cure its material default, AT&T Florida should not be required to bear the safety, operational and economic risks of continuing to provide collocation services to CA while CA continues to be in default, regardless of whether CA is pursuing dispute resolution, litigation or subsequent appeals. CA's rights are amply protected without its proposed language, as it still has all of its legal remedies, including seeking a temporary restraining order ("TRO") or preliminary injunction, if CA believes that AT&T Florida has wrongly claimed that CA is in default of its material obligations.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** No. AT&T's language seeks to give AT&T the ability to unilaterally take action against CA which could severely harm CA (and may threaten CA's very existence), without first providing an opportunity for CA to contest the assertion that it is in default. The Draft has a dispute resolution provision available to both parties, but AT&T's language seeks to bypass its obligation to invoke that provision to resolve disputes in good faith and to instead allow it to act unilaterally without oversight or review. CA believes that this is anti-competitive and arbitrary; AT&T has not alleged or shown that the dispute resolution process is not adequate to address this concern. The Commission has recently approved an accelerated dispute resolution process which would be available to either party for resolution of time-sensitive issues.

**AT&T FLORIDA:** Yes. AT&T Florida should be permitted to refuse applications or additions to service or to complete pending orders after it has sent a notice of material default to CA but prior to conclusion of dispute resolution, including litigation and any subsequent appeals. AT&T Florida should not be required to bear the risk of providing collocation services to CA for an extended period of time simply because CA disputes the material default. The risk to AT&T Florida is not merely economic, but could also relate to safety or operational matters that are the subject of a default. As with Issue 4a, CA still has all of its legal remedies, including seeking a



TRO or preliminary injunction, if CA believes that AT&T Florida has wrongly claimed that CA is in default of its material obligations.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** 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. CA has also added language 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.

**AT&T FLORIDA:** Yes. CA has already agreed to provide a certificate of insurance prior to starting work and has agreed that its failure to do so would be a breach of the agreement. The disagreement here is how long a grace period CA will have when it has failed to provide the required insurance. Given that AT&T Florida is incurring substantial risk by allowing CA to collocate in AT&T Florida's space while uninsured, it would be reasonable to not provide for any grace period. However, AT&T Florida is willing to do so. Five (5) business days is an adequate and appropriate grace period for CA to cure an insurance deficiency. CA is in control of the timing of its own work and is able – and required by the agreement – to make arrangements for insurance well in advance of starting any work. If it has failed to do so, the burden is on CA to expeditiously remedy the situation.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:**                    AT&T's proposed language would permit it to charge CA for arbitrary construction costs entirely unrelated to CA's collocation in a AT&T central office. CA believes that this is inappropriate, 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. CA has added language clarifying that AT&T may only bill CA for such security upgrades if those upgrades are in response to CA's proven misconduct. AT&T has testified that it has never in its history had to erect such a partition despite nearly two decades of dealing with 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.

**AT&T FLORIDA:**    Yes. AT&T Florida should be allowed to recover its costs when it erects an interior security partition, regardless of whether CA has committed any wrongdoing or violated the agreement. AT&T Florida must be able to protect its equipment and the equipment of other Collocators and to ensure network reliability, and it is entitled to recover those costs from the cost-causer, which is CA, irrespective of wrongdoing or breach of the agreement. This provision is narrowly tailored to limit AT&T Florida's recovery of its costs to erect an internal partition to those situations where the cost to do so is less than the cost of other reasonable security measures.

**STAFF:**                No position.

**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?**

**POSITIONS**

**CA:** AT&T's proposed language permits AT&T to charge application fees over and over again for the same application, even if AT&T has rejected the application improperly or if the resubmission of the application does not increase AT&T's costs. Since collocation is intended to be TELRIC-based, CA believes this 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 review of the same application are not covered by the initial application fee. CA believes that the application fee is more than adequate to cover those costs.

**AT&T FLORIDA:** When CA submits a modified collocation application after AT&T Florida has responded to the initial application, AT&T Florida needs to review the modified application, which causes costs that AT&T Florida is entitled to recover. CA generally agrees. CA proposes two unreasonable exceptions, however. First, CA proposes that it not have to pay when AT&T Florida requests the modification. But AT&T Florida will request a modification to an application only when its review shows that a change needs to be made, and if CA believes otherwise in a particular instance, it can pursue the matter through the dispute resolution provision in the ICA. Second, even when the modification does not result in a change to the number, type or size of cables, floor space, or cost, the modified application still must be reviewed, and CA should not be exempt from paying a fee for that review.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** 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 because this agreement requires such a submission when CA changes equipment. Since collocation is intended to be TELRIC-based, such a charge is inappropriate because AT&T does not incur costs when CA installs its

own equipment and simply complies with the agreement's requirement to update AT&T's records.

**AT&T FLORIDA:** Yes. When CA seeks to augment its collocation space, an Augment Application and related fees should be required. An Augment Application is the appropriate means to inform AT&T Florida of any changes to CA's collocation space, equipment or cables. AT&T Florida incurs costs to review an Augment Application, which AT&T Florida is entitled to recover.

**STAFF:** No position.

**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?

### **POSITIONS**

**CA:** The Telecommunications Act of 1996 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 believes that it is more reasonable to specify an initial period of 180 days for it to install its fiber optics, and that an extension should be 90 days instead of 30 in case CA needs more time. CA has also removed the provision that requires the request for extension 15 days prior to the expiration of the original window, because there is no demonstrated need for such advance notice or harm to AT&T if notice is not given in advance. 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.

**AT&T FLORIDA:** Yes. 120 calendar days, with a possible 30 calendar day extension, is adequate time for CA to place cable in a manhole. CA has control over when it submits a request for an entrance fiber, and with proper planning, CA should be able to place the cable in the manhole within 120-150 calendar days. Other carriers with which AT&T Florida has ICAs have consistently been able to meet that deadline. Moreover, if extraordinary

conditions hinder placement of CA's cable, CA may invoke the force majeure provisions in the ICA.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** No. CA would incur substantial costs if it were required to utilize a AT&T AIS to install a data cable to another Collocator which is less than 10 feet away from CA's central office collocation. 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 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.

**AT&T FLORIDA:** Yes. CA should comply with AT&T Florida's standard requirements for CLEC-to-CLEC connection, regardless of where the CLECs are located. All work must be performed by a Tier 1 AIS so that AT&T Florida can properly maintain and organize the facilities in its central offices, including its own and those of other Collocators. To allow every CLEC to run facilities without benefit of a systematic and safe system utilizing appropriate support structures would jeopardize AT&T Florida's ability to ensure the safety and integrity of its network and the facilities of Collocators.

**STAFF:** No position.

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

**POSITIONS**

**CA:** No. CA would incur substantial costs if it were required to utilize a AT&T AIS to install a data cable that runs to another Collocator which is less than 10 feet away from CA's central office collocation. 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 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.

**AT&T FLORIDA:** Yes. All CLEC-to-CLEC connections must utilize AT&T Florida's common cable support structure without regard to the distance between CA and third party collocation arrangements. AT&T Florida must ensure the safety and integrity of its network and the facilities of each Collocator, and has set specific common standards that apply equally to all Collocators. Utilization of the common cable support is one of these requirements.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** CA objects to AT&T's proposed language because it permits AT&T to inflict serious and possibly fatal harm to CA based solely upon AT&T's "belief" and without any apparent provision for that belief to be properly contested prior to harming CA. As shown elsewhere in AT&T's proposed language for this agreement, AT&T seems to propose that CA's sole remedy for anything is the dispute resolution process in this agreement, but AT&T seeks to embed other remedies for itself which do not require it to comply with the same dispute resolution provisions imposed upon CA. CA does not find this arrangement fair or equitable, so CA has instead inserted proposed language to require compliance with the dispute resolution provision. CA also lengthened the cure time to 30 days to give CA ample time to replace equipment or notify customers that CA will not be able to provide service any longer. CA has left in AT&T's language holding CA responsible for all resulting damage, which should mitigate any concerns about the longer cure time.

**AT&T FLORIDA:** No. This dispute concerns whether CA's equipment may remain in place if CA disputes AT&T Florida's determination that the equipment is improperly collocated, either because it does not comply with minimum

safety standards or because it was not previously identified on an approved application for collocation or included on the approved equipment list (“AEL”). If collocated equipment does not meet minimum safety standards or is not on the AEL, the equipment should be removed as soon as possible in order to protect the safety and integrity of AT&T Florida’s network and the facilities of other Collocators. The parties have already agreed that CA may leave its equipment in place pending dispute resolution if the dispute pertains to whether equipment is necessary for interconnection or access to UNEs – because in that scenario, unlike the one about which the parties disagree, CA is not endangering anyone else’s personnel or property.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** AT&T has a well-established history of failure to properly and timely send complete bills to CLECs. In this proceeding, AT&T has admitted that its bills to CLECs are not always delivered timely. In the event that AT&T does not timely send a bill to CA, the due date should be adjusted to provide time for the CA to review, dispute and/or remit payment as appropriate. If CA abuses this provision, AT&T would still be able to seek dispute resolution remedies under the good faith requirements of this agreement, and AT&T is also able to send bills to CA with delivery confirmation to prove date of receipt if it chooses to do so. 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 language. AT&T’s language would therefore unfairly discriminate against CA.

**AT&T FLORIDA:** The bill due date should be 30 calendar days from the date of the bill. This is a reasonable period of time for the billed party to render payment and is straightforward to administer. Establishing the bill due date based on when a bill is received, as CA proposes, would place the burden on the billing party to obtain and verify proof of receipt. 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 30 calendar days from the bill date to determine which is later. This is important because late fees and interest are assessed based on whether payment is received

by the bill due date. CA's proposal complicates the billing process unnecessarily and is likely to lead to disputes.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** i) Resolved.

ii) AT&T unilaterally moved this issue to Issue 24.

**AT&T FLORIDA:** Resolved.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** 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 AT&T's favor. CA has also removed language that would subject CA to late payment charges if CA does not submit remittance information, 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 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. Therefore, AT&T's language would permit it to have use of the funds upon receipt but to impose Late Payment Charges upon those funds as if they had not been timely received. CA believes this is clearly unfair.

**AT&T FLORIDA:** i) No. Late payment charges should apply to any charges not paid by the bill due date. For those charges subject to a dispute, late payment charges will accrue during the pendency of the dispute and will be credited to the billed party if the dispute is resolved in its favor. CA's language would allow CA to pay late at will, and to avoid late payment charges simply by disputing the bill. Moreover, CA's language limiting the applicability of late payment charges to undisputed charges is inconsistent with other ICA language to which the parties have agreed. For example, the parties have agreed that Att. 2 (Network Interconnection) section 6.13.7 will state: "Late payment charges . . . will continue to accrue on the Disputed Amounts while the dispute remains pending."

ii) Yes. Without the proper remittance information, AT&T Florida cannot process CA's payment, as CA acknowledged by its agreement to language in GT&C section 11.5 so stating. The parties have also agreed to language in section 11.5 stating that payment is not considered to have been made until both the funds and the remittance information have been received. When CA's payment is not made, late payment charges are appropriate.

**STAFF:** No position.

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

**POSITIONS**

**CA:** Yes. CA has modified AT&T's language to clarify that only undisputed charges are considered unpaid charges if not timely paid.

**AT&T FLORIDA:** No. Any payment not made on time is past due. Late payment and interest charges properly accrue on any amount not paid on time, including charges subject to a dispute. Once a dispute is resolved, late payment and interest charges will be released to the billing party or credited to the billed party depending on how the dispute is resolved. CA's language would allow CA to pay late at will and to avoid late payment charges by disputing the bill.

**STAFF:** No position.

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

**POSITIONS**

**CA:** Yes. CA has modified AT&T’s language to clarify that only undisputed charges are considered unpaid charges if not timely paid.

**AT&T FLORIDA:** No. An unpaid charge means any charge not paid on time. CA’s inclusion of “undisputed” in the definition is inconsistent with the use of the term in agreed provisions in the ICA. For example, GT&C section 11.9 states: “If Unpaid Charges are subject to a billing dispute between the Parties, the Non-Paying Party must, prior to the Bill Due Date, give written notice to the Billing Party of the Disputed Amounts and include in such written notice the specific details and reasons for disputing each item listed in Section 13.4 below.” That provision would make no sense if unpaid charges were defined as only those charges that are undisputed.

**STAFF:** No position.

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

**POSITIONS**

**CA:** 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.

**AT&T FLORIDA:** No. Late payment and/or interest charges should apply to all unpaid amounts. Such late fees properly accrue on any amount not paid on time, including charges subject to a dispute. Once a dispute is resolved, late payment and interest charges will be released to the billing party or credited to the billed party depending on resolution of the dispute. With the revisions CA has proposed to the billing and payment language in section 11, it does not appear that CA would ever pay late payment charges on any amounts it disputed – even if the dispute is resolved against CA.

**STAFF:** No position.

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

**POSITIONS**

**CA:** It is well settled industry standard policy that each party must bear its own costs for local interconnection, but AT&T has refused to explain the nature of its objections to CA's revisions which make this clear. CA's position would not require AT&T to provide Entrance Facilities at no charge. CA believes that the placement of this language is appropriate, to make clear that similar elements listed in the pricing attachment (such as Entrance Facilities) may not be charged to CA for anything on the AT&T side of the POI. T&T has also recently 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 Act, and is also at odds with the prior positions of all ILECs, including AT&T and its predecessor BellSouth. The prior position, 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 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:** No. First, it is not appropriate to include pricing in the GT&Cs. Pricing for local interconnection services is appropriately captured in the network interconnection and pricing attachments. Second, AT&T Florida is not obligated to provide CA with any and all services and components related to interconnection at no charge. For example, the Supreme Court determined in Talk America that AT&T Florida is obligated to make entrance facilities available to CLECs at TELRIC-based prices (not for free) when those facilities are used solely for interconnection.

**STAFF:** No position.

- 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?**
  - ii) Should AT&T Florida be obligated to process Communications Authority's ASRs at no charge?**

**POSITIONS**

**CA:**

i) 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 has provided several examples where this has previously occurred with AT&T Florida. 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.

ii) 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. Although this Agreement places the ordering burden upon CA, this does not mean that the trunks are solely for CA's benefit nor is it grounds to depart from the "each party bears its own costs" standard. CA shall bears its own costs to submit a Local Interconnection order, and AT&T should bears its own costs to process that order.

**AT&T FLORIDA:**

(i) Yes. Section 4.6 addresses trunk servicing, in other words, adjusting the sizing of working trunk groups based on utilization. In the event a trunk servicing order is in held status more than two business days while the parties discuss whether the order should be fulfilled as placed, an ASR supplement is required to establish a new due date. It is unreasonable to hold AT&T Florida to a due date when an order is held, and an ASR is necessary to change the due date.

ii) The Commission should reject CA's proposal to require AT&T Florida to process CA's ASRs for free, which would require AT&T Florida to absorb the non-recurring costs incurred as a result of CA's trunk orders. As the "cost-causer," CA is responsible for such costs and should pay the full amount of all applicable non-recurring charges. Furthermore, CA's language is inconsistent with language to which CA agreed in section 1.7.4 of the Pricing Schedule, which states: "CLEC shall pay the applicable service order processing/administration charge for each service order submitted by CLEC to AT&T-21STATE to process a request for installation, disconnection, rearrangement, change, or record order."

**STAFF:** No position.

**ISSUE 15:** i) What is the appropriate time period for Communications Authority to deliver the additional insured endorsement for Commercial General Liability insurance?

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?

**POSITIONS**

**CA:** i) Resolved.

ii) 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. Further, 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. CA rejects AT&T's comments 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. Many CLECs operate in a limited capacity after inception and wait for years before deploying their own physical networks, and therefore would not need such coverage until their deployment begins.

**AT&T FLORIDA:** i) Resolved.

ii) No. CA's proposed language is based on CA's position that it should not be required to obtain insurance to cover work that it does not do. That position may seem reasonable, but the fact is that CA will definitely do the sort of work that is the subject of the contract provision at Issue. GT&C section 6.2.2.14 comes into play only if CA collocates, and if CA collocates, then CA necessarily will do "such work." This is because Collocation section 14.1.2 obligates CA to bring its fiber facilities to the entrance manhole, and to do that, CA must enter the underground

structure, which is engaging in “such work.” Thus, CA is in effect proposing to create an exception that, by definition, can never apply.

**STAFF:** Staff notes that Issue 15i is resolved. Staff takes no position on Issue 15ii.

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

**POSITIONS**

**CA:** CA believes that its proposed general liability limits are adequate to insure all actual risks caused by CA’s activities when collocating. AT&T has not shown that it incurs risk greater than CA’s proposed 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. 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.

**AT&T FLORIDA:** AT&T Florida’s proposed insurance requirements when CA is collocated in AT&T Florida’s central office provide reasonable protection, while CA’s proposed coverage is inadequate. CA’s proposed \$2 million coverage in the aggregate could be eroded by the payment of other claims, and the low limit of \$2 million each occurrence could create an exposure to AT&T Florida if the limit did not cover a claim. AT&T Florida is obligated to permit CA to come onto its premises, and CA’s very presence puts AT&T Florida at risk of damages. AT&T Florida’s insurance levels are proportional to the risk CA imposes on AT&T Florida.

**STAFF:** No position.

**ISSUE 17:**

- i) What notification interval should Communications Authority provide to AT&T Florida for a proposed assignment or transfer?**
- ii) Should AT&T Florida be obligated to recognize an assignment or transfer of the ICA that the ICA does not permit?**
- iii) Should the ICA disallow assignment or transfer of the ICA to an Affiliate that has its own ICA in Florida?**

**POSITIONS**

**CA:**

i) Resolved.

ii) CA believes that the language proposed in the Decision Point List for this issue be adopted.

iii) The language proposed by AT&T would serve to prevent CA's purchase by or purchase of another CLEC by attempting to deny the other party the ability to obtain CA's interconnection agreement if the other party already has one. This would substantially devalue CA's assets both by the value of having conducted this arbitration to obtain a favorable 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, TCG 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 also refuses to pay CLEC access bills even while blaming AT&T Florida for records errors that led to the bills. TCG 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 gamesmanship to its own advantage, it seeks to deny CLECs even the most basic of fair terms.

**AT&T FLORIDA:**

i) Resolved.

ii) No. The disputed sentence merely provides that AT&T Florida is not obligated to accept an assignment or transfer that is impermissible under the preceding sentence in section 7.1.1. That is perfectly reasonable.

iii) Yes. CA and its potential assignee are each bound by the terms of its own ICA. CA and the assignee should not be permitted to ICA shop, selecting the terms and conditions they prefer between two different ICAs and bypassing the terms of their existing ICAs prior to termination.

**STAFF:**

Staff notes that Issue 17i has been resolved. Staff has no position on Issue 17ii or 17iii.

**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?**

**POSITIONS**

**CA:**                    CA is a small company with limited resources, has expended tremendous resources to arbitrate this ICA, and is being forced to arbitrate dozens of issues that AT&T has refused to discuss. CA believes that AT&T has not shown that it is entitled to a shorter term as it has demanded. 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 Agreements 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.

In response to CA's comments about Change of Law, AT&T then asserted that "changes in the marketplace" other than changes of law make a two-year term necessary, however it has given no examples of such changes nor has it shown that the marketplace is changing more rapidly than it has since 1996. Other ICAs are in force in Florida today between AT&T Florida and CLECs, which have been in effect for more than ten years while AT&T has not forced renegotiation of those agreements. It is also worthy of note that 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.

**AT&T FLORIDA:**    The ICA should expire on a date certain that is three years plus 90 days from the date the ICA is sent to CA for execution. This accomplishes three things. First, it removes any confusion regarding exactly when the ICA expires, which is important in administering the ICA, not only for CA, but also for CLECs that adopt CA's ICA pursuant to section 252(i) of the 1996 Act. Second, it provides for more than a three-year term by building in some leeway to allow for the normal processing and ICA approval time that is inherent in the process. And third, a term that is slightly more than three years provides the Parties with the ability to



accommodate the rapidly changing telecommunications industry should modifications to the ICA that are not directly tied to a change in law be appropriate. CA's proposed term of five years is too long in today's rapidly-changing industry.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** Although AT&T's language throughout the Draft ICA 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. Under AT&T's proposed language, it could simply allege a breach, invoking no formal process and proving nothing, and terminate all service to CA and CA's customers thereby putting its smaller competitor out of business. This is clearly anti-competitive, and does not encourage competition as the 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 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.

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 put 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 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. It is illogical to permit AT&T to terminate the agreement and services until disputes are resolved.

**AT&T FLORIDA:** No. A party needs to be able to terminate the ICA in the event of a material breach. CA's proposed language could obligate AT&T Florida to continue operating pursuant to the ICA for a prolonged period of time while related litigation worked its way through the court system, including any appeals. During this protracted period of time, CA would have no obligation to cure the breach and AT&T Florida would have no recourse. The Commission need not be concerned that AT&T Florida would terminate an ICA if there is any legitimate dispute about the breach. AT&T Florida is extraordinarily cautious about terminations and is mindful of the liability to which it would be exposed if it terminated without ample cause.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** Although AT&T's language throughout this Agreement 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. Under AT&T's proposed language, it could fail or refuse to cooperate with CA to resolve bona fide billing disputes, fail to invoke the dispute resolution provision of this Agreement to resolve such disputes, but then refuse to negotiate a successor agreement at the end of the term, essentially blackmailing CA into paying disputed charges if it wishes to continue its operations. CA points out that AT&T is already entitled to terminate the Agreement for breach, and if it so terminates then 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 with CA.

**AT&T FLORIDA:** Yes. CA should not be permitted to negotiate a new ICA unless it has satisfied its payment obligations under the existing ICA. Both parties have an incentive to handle billing disputes reasonably and expeditiously. Further, CA's position is inconsistent with Commission precedent. See Commission Order No. PSC-11-0291-PAA-TP issued July 6, 2011, in Docket No. 110087-TP. A CLEC, Express Phone, sought to enter into a new ICA when it had an outstanding disputed balance due under its existing ICA. AT&T Florida contested the CLEC's right to do so. The Commission sustained AT&T Florida's position.

**STAFF:** No position.

**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?**

This issue is resolved.

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

**POSITIONS**

**CA:** AT&T has a well-established history of inaccurate CLEC billing and failure to timely resolve disputes in good faith. AT&T has acknowledged that its bills are not always accurate. 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 considerable CA 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 place 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 moving dispute data 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.

**AT&T FLORIDA:** Yes. AT&T Florida deals with a large number of CLECs and is able to process billing disputes most expeditiously when they use a standard mechanism for submitting such disputes. The information and format requested by AT&T Florida ensures that the information provided by the customer is sufficient to identify the exact billed item in dispute with clarity and improves AT&T Florida's ability to resolve the disputes accurately and in a timely fashion. When customers use a different format, there are often delays and confusion in processing claims. In many cases the claims are rejected because the CLEC-provided data is inadequate.

**STAFF:** No position.

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

**POSITIONS**

**CA:** See above.

**AT&T FLORIDA:** Yes. See AT&T Florida's position for Issue 22a.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** CA objects to and has stricken AT&T's requirement that all disputed charges must be paid into escrow by CA. This 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. CA has already agreed to AT&T's deposit requirement, 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.

**AT&T FLORIDA:** Yes. AT&T ILECs have lost tens of millions of dollars to carriers that disputed their bills without a proper basis and then, when the disputes were resolved in AT&T's favor, did not have the funds to pay the amounts they owed. AT&T Florida's escrow language is a reasonable measure to prevent this. If CA disputes an AT&T Florida bill (other than for reciprocal compensation), CA should be required to deposit the disputed amounts in an interest-bearing escrow account in order to ensure that funds will be available if the dispute is resolved in AT&T Florida's favor. The escrow provisions proposed by AT&T Florida are consistent with the escrow provisions in many current ICAs, and need to be in CA's ICA. Moreover, AT&T Florida's proposed language in section 11.9.1 provides exceptions to the escrow requirement that significantly limit CA's obligation to escrow disputed amounts, while still affording AT&T Florida some protection against the lost revenue that would result when disputes for larger amounts are resolved in AT&T Florida's favor and CA (or an adopting CLEC) cannot pay.

**STAFF:** No position.

**ISSUE 24:**

- i) Should the ICA provide that the billing party may only send a discontinuance notice for unpaid undisputed charges?**
- ii) Should the non-paying party have 15 or 30 calendar days from the date of a discontinuance notice to remit payment?**

**POSITIONS**

**CA:**

- i) AT&T seeks to provide itself with remedies other than the dispute resolution process in this agreement while denying CA the protections of due process. 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. 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.

ii) 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 rationale suspect.

**AT&T FLORIDA:** i) The question that is actually presented by the disagreement in the first sentence of section 12.2 is whether disputed amounts must be paid, either to the Billing Party or into escrow. The answer to that question is yes, for the reasons summarized above in connection with Issue 23a. If the Commission determines that disputed amounts must be paid into escrow (if not paid to the Billing Party), as it should, it necessarily follows that a failure to escrow disputed amounts is not meaningfully different from a failure to pay undisputed amounts to the billing party, and so is properly a trigger for a Discontinuance Notice. Thus, the question is not whether the Billing Party should be entitled to send a Discontinuance Notice for unpaid charges; rather, it is whether disputed amounts should be paid. This includes disputed amounts when they remain unpaid following resolution of a dispute.

ii) The non-paying party should have 15 calendar days from the date of a Discontinuance Notice to remit payment. The Billed Party has already had 31 days from the bill date to pay before the bill becomes past due. This gives the Billed Party a minimum of 46 days (and most likely longer) to pay its bill in order to avoid service disruption or disconnection, which is reasonable.

**STAFF:** No position.

**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?**

**POSITIONS**

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

**AT&T FLORIDA:** No. 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 some instances where that is not possible, and AT&T Florida should not be contractually obligated to do the impossible. For example, credits may be applied following resolution of formal billing disputes based on settlement between the parties or as directed by the Commission, which may not include the level of specificity CA's language would require.

**STAFF:**                No position.

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

This issue is resolved.

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

**POSITIONS**

**CA:**                    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. An example of this would be if AT&T bills for local interconnection trunks which it is not entitled to do; 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, it would be a tremendous waste of time for both parties 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.

**AT&T FLORIDA:** No. AT&T Florida does accept bulk disputes in some cases, generally as the result of an agreement on an individual case basis. However, normal monthly recurring and nonrecurring charges should be disputed at the billed item level, and the AT&T Florida dispute template is structured in that manner. In most cases, CLECs have large billing accounts with a mixture of services, and the specificity required to identify the disputed service necessitates that the customer submit the billing detail.

**STAFF:** No position.

**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?**

**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?**

This issue is 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?**

**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?**

## **POSITIONS**

**CA.:** i) 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 violation by AT&T of this Agreement or any law or regulation, whether or not it invokes the dispute resolution process in this Agreement. 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&T's suggestion that this would "bypass the dispute resolution provisions of the ICA" because CA seeks to include this language in those provisions.

ii) 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.

**AT&T FLORIDA:**

i) No. The dispute resolution provisions of the ICA provide the proper framework for the parties to resolve disputes. Neither party should burden the Commission by bringing to it a complaint alleging a violation of the ICA without first attempting to resolve the issue informally, which is what the agreed dispute resolution provisions require.

ii) No. By the time the ICA is effective, the parties will have spent many months negotiating and arbitrating the language that will bind the parties – language that considered all relevant laws and regulations. The law is clear that once parties have entered into an ICA, they are bound by the terms of the ICA, and the 1996 Act and the FCC's implementing regulations no longer apply to the matters that are covered by the ICA (or that could have been covered but were not). Consequently, and contrary to CA's proposed language, any claims that the parties may have against each other with respect to those matters will be claims for breach of the ICA – not claims for violations of laws or regulations.

**STAFF:**

No position.

**ISSUE 30:**

**i) Should the joint and several liability terms be reciprocal?**

**ii) Can a third-party that places an order under this ICA using Communications Authority's company code or identifier be jointly and severally liable under the ICA?**

**POSITIONS**

**CA:**

i) 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.

ii) Resolved.

**AT&T FLORIDA:** i) No. The only AT&T entity that can be subject to this ICA as an ILEC is AT&T Florida; AT&T Florida's CLEC affiliates cannot be subject to this ICA in the position of ILEC. The only way an AT&T CLEC affiliate would be subject to this ICA is if it adopted CA's ICA pursuant to section 252(i) of the 1996 Act. In that event, AT&T Florida's CLEC affiliate would be subject to the same terms and conditions as CA, not those of AT&T Florida.

ii) Yes. To the extent another entity (including a CA affiliate) operates on CA's behalf pursuant to the ICA, CA and such entity must be jointly and severally liable. This protects AT&T Florida from potential loss resulting from inappropriate conduct by and between CA and its affiliates/other entities.

**STAFF:** No position.

**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?**

This issue is 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?**

**POSITIONS**

**CA:** Taxes should be billed as separate line items so CA may audit its invoices.

**AT&T FLORIDA:** No. AT&T Florida will depict taxes as a separate line item on CA's bill whenever possible. However, it is conceivable that a legitimate tax might be omitted in error, e.g., in the case of a new tax. In that situation, CA is still obligated to pay those taxes; CA is not excused from its obligation to pay taxes based on the appearance of AT&T Florida's bills, which is what AT&T Florida's language reflects.

**STAFF:** No position.

**ISSUE 33a:**            **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?**

**POSITIONS**

**CA:**                    Yes.

**AT&T FLORIDA:** It goes without saying that the purchasing Party should not have to pay the same tax twice. The real question presented by this issue is whether, when CA resells AT&T Florida's telecommunications services to CA's end users, AT&T Florida should bill and collect the taxes on behalf of CA and then remit those taxes to the appropriate governmental authority, or whether CA should collect the taxes and pay the governmental authority itself. The answer is that AT&T Florida should bill and collect the taxes and remit them to the appropriate governmental authority. This is the way it works with all resellers of AT&T Florida services, because their customers are treated exactly the same as AT&T Florida's end user customers. Furthermore, the parties have already agreed on contract language that provides that AT&T Florida will remit the taxes to the governmental authority and pass the charges through to CA. And CA's proposed language for GT&C sections 37.3 and 37.4 would be unreasonable even if it were not inconsistent with language on which the parties have already agreed, because it would require AT&T Florida to revamp its billing system to accommodate CA alone.

**STAFF:**                No position.

**ISSUE 33b:**            **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?**

**POSITIONS**

**CA:**                    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. 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.

**AT&T FLORIDA:** Yes. AT&T Florida treats all resale customers the same, regardless of whether the CLEC also provides facilities-based services. As such, AT&T Florida provides its resale services as a complete package, including the billing, collecting and remitting of 911 surcharges for those resale lines. It is CA's responsibility, not AT&T Florida's, to remit 911 surcharges for CA's customers who use CA's facilities-based services. In addition, it is CA's responsibility to know where its own customers are located in order to avoid "double paying" charges that AT&T Florida is responsible to remit. CA's proposed contract language is unreasonable, because it would require AT&T Florida to modify its billing system to suppress the application of 911 surcharges to CA's resale end users; as well as to suppress the remittance of those surcharges to the Florida 911 Board.

**STAFF:** No position.

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

**POSITIONS**

**CA:** 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. All of these 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.

**AT&T FLORIDA:** Yes. AT&T Florida has E911 Selective Routers (“SRs”) that provide 911 service to certain PSAPs as its customers. AT&T Florida is not the 911 service provider for all PSAPs in Florida, and CA is of course free to route its end users’ 911 calls to PSAPs that AT&T Florida does not serve in whatever way it wishes. But for those PSAPs that are served by AT&T Florida’s SRs, all 911 calls must be routed through those SRs. CA should be required to directly interconnect with those SRs in order to route its end user customers’ 911 calls to the PSAPs that are served by those SRs. The alternative would be for CA to contract with a 911 aggregator that would act as a middleman, so that CA would route its 911 traffic through the aggregator to the AT&T Florida SR. That should not be permitted, because the introduction of the additional carrier into the call path could imperil the reliability of the E911 system.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** AT&T’s definition of entrance facilities implies that AT&T could charge for entrance facilities even in cases where the POI is in an AT&T Central Office and CA extends its network into that Central Office by purchasing collocation to meet AT&T at the POI. Entrance Facility should only apply if CA requests AT&T to provide transport from AT&T’s Central Office to another location.

**AT&T FLORIDA:** No. The parties’ agreed language reflects the appropriate definition of Entrance Facilities. CA’s additional language reveals CA’s attempt to inappropriately expand the definition of Entrance Facilities to include intra-building facilities between CA’s collocation and the POI, and then argue that CA should not have to pay for them. This language directly contradicts the agreed language and will lead to disputes. CA is responsible to provide the facilities to connect with AT&T Florida’s network at the POI, even when CA is collocated in the same building where it has established the POI.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:**                    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 between CA and the secondary location, then CA should be entitled to lease AT&T dedicated interoffice transport between the original POI where CA's network is already interconnected and the proposed new POI. 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.

**AT&T FLORIDA:**   No. Section 3.2.4 and its subsections address when and where CA shall establish POIs on AT&T Florida's network; it does not (and need not) address how CA may do so. Rather, section 3.3 provides the terms and conditions pursuant to which CA may establish interconnection, and section 3.3.2 provides for CA's use of leased facilities. CA's additional language in section 3.2.4.6 should be rejected.

**STAFF:**                No position.

**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?**

**POSITIONS**

**CA:**                    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 e911 trunks. 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 add 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 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 facilities were properly classified as Local

Interconnection and removed from this provision, then CA would agree with AT&T's proposed language here.

**AT&T FLORIDA:** Yes. The parties agreed in Net. Int. section 4.1.2 that OS/DA, E911, Mass Calling (i.e., HVCI), and Third Party Trunk Groups are used for ancillary services. Because they are used by CA for the sole benefit of its own customers, and not for the mutual exchange of traffic with AT&T Florida, CA should be solely responsible, including financially, for the facilities that carry those trunk groups. With respect to E911 trunk groups in particular, the counties responding to 911 calls do not pay for the facilities over which CA's E911 trunks ride. AT&T Florida should not have to bear the cost for these facilities; rather these are costs that CA should bear. Moreover, AT&T Florida's language in Net. Int. section 3.2.6 is consistent with agreed language in Attachment 5 – 911/E911 section 4.1.2, which provides that CA is financially responsible for the facilities that carry its 911 traffic to the appropriate AT&T Florida selective router, regardless of where the POI is located.

**STAFF:** No position.

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

**POSITIONS**

**CA:** 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. For decades, ILECs including AT&T 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. CA has direct knowledge of 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. This does not seem to be in good faith or in keeping with the Act's intentions, so CA seeks to revise this language to clarify.

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 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 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.

**AT&T FLORIDA:** No. Under controlling federal law, the point of interconnection ("POI") must be on AT&T Florida's network, and that point on AT&T Florida's network is the demarcation point between the facilities for which AT&T Florida is responsible and the facilities for which CA is responsible. Consequently, if CA has equipment collocated in an AT&T Florida end office building, CA is responsible for the facilities that connect that equipment to AT&T Florida's network. The "collocation arrangement" cannot be the POI, because an arrangement is not a location. Nor can the POI be the space in which CA is collocated, because that space is not part of AT&T Florida's network. Indeed, if AT&T Florida were required to bear the cost of the facilities that connect CA's collocated equipment with AT&T Florida's network, that would make CA's equipment the POI and so would be directly contrary to controlling federal law.

**STAFF:** No position.

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

This issue is 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?**

This issue is resolved.

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

**POSITIONS**

**CA:** No. Through this provision, AT&T seeks to force CA to purchase unnecessary services from AT&T in order to obtain local interconnection.



In practice, many CLECs today do not use HVCI/mass calling trunks, including several that CA 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. CA should have total control of which trunks it will order to interconnect its own switches to others. While AT&T has cited in supports 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, 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.

**AT&T FLORIDA:** Yes. AT&T's experience with and analysis of network outages caused by mass calling events, demonstrate that mass calling trunks are necessary to minimize the risk that a mass calling event will cause an outage or otherwise harm the Public Switched Telephone Network. Accordingly, AT&T Florida appropriately expects all carriers (including itself and its affiliates) to establish segregated trunk groups for mass calling. There is no reason to except CA from this sound network reliability practice.

**STAFF:** No position.

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

**POSITIONS**

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

**AT&T FLORIDA:** No. AT&T Florida currently does not offer, install or provide interconnection trunking using SIP Voice-over IP or Voice-using IP to any entity; it does not have the capability to do so; and it has no intention to do so unless there is a change in existing law, which does not require AT&T Florida to provide IP interconnection. If the law changes, CA would be entitled to amend the ICA accordingly. Also, if AT&T Florida at some point offers, installs or provides IP interconnection to another carrier pursuant to that carrier's ICA, CA can adopt that carrier's ICA at the appropriate time pursuant to 47 U.S.C. § 252(i). The availability of such remedies is one reason that ICAs do not include "most favored nation" provisions of the sort CA is proposing here.

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

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

**STAFF:** No position.

**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?**

This issue is resolved.

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

**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?**

**POSITIONS**

**CA:**                    i) 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.

**AT&T FLORIDA:**    i) Yes. The parties have agreed to language providing that late payment charges apply to past due amounts (GT&C section 11.3) and also that interest charges accrue on unpaid amounts (GT&C section 11.4). The billing party is entitled to accrue both late payment charges and interest on the disputed amounts for reciprocal compensation while a dispute is pending. Interest and late payment charges serve different purposes. Interest is compensation for the time value of money, while late payment charges are intended as an incentive to encourage prompt payment. Late payment charges and interest charges are not mutually exclusive. Florida law recognizes and allows the imposition of both simultaneously.

ii) This provision is reciprocal and, therefore, applies equally to both parties, regardless of which is the billing party. When a billing dispute arising from intercarrier compensation charges is resolved in the billing party's favor, ten business days (typically two weeks) is a reasonable time for the billed party to make payment. CA should not need additional time for financing payments for intercarrier compensation that it could have reasonably anticipated, and AT&T Florida should not have to wait an additional three weeks to be paid.

ii) Resolved.

**STAFF:**                No position.

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

**POSITIONS**

**CA:** 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 deny CAs access to HDSL-capable loops in Tier 1 Wire Centers. AT&T’s predecessor BellSouth took the same position that CA now takes before the FCC in 2004 during the Triennial Review proceeding, while AT&T now seems to take the opposite position after getting the relief it was requesting in 2004.

**AT&T FLORIDA:** No. The ICA should not define a separate class of loop called “HDSL-capable” loop. There is no difference between an HDSL loop and an “HDSL-capable” loop. An HDSL loop is simply a dry copper loop with certain design limitations that is capable of a signal speed of 1.544 megabytes per second (“Mbps”). Whether CA orders an HDSL loop or an “HDSL-capable” loop, it receives exactly the same facility. CA’s proposed definition serves no purpose other than to allow CA to try to evade the impairment thresholds in the Triennial Review Remand Order (“TRRO”) by re-labeling HDSL loops as “HDSL-capable” loops.

**STAFF:** No position.

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

**POSITIONS**

**CA:** CA objects to AT&T’s language, because it 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 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.

**AT&T FLORIDA:** Any given NXX code (or thousand block of numbers within an NXX code, known as NXX-X) is assigned to, and therefore “owned” by, a single carrier. When an end user customer of that carrier switches to

another carrier for local exchange service, that end user's number may be ported, so that the end user does not have to change phone numbers. When the telephone number is no longer in use because the end user discontinues service, that telephone number should be returned to the carrier that owns the NXX code. CA's language would improperly permit "ownership" of the ported number to pass permanently to the company to which the end user changed, so that that company could assign the number to another end user.

**STAFF:** No position.

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

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

**POSITIONS**

**CA:** i) 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. With the advent of VoIP, it is well established that a CLEC does not need to own 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 LATA to exchange traffic for NXXs within the LATA. CA proposes alternate language to clarify that point.

ii) Resolved.

**AT&T FLORIDA:** i) Yes. The FCC has made clear that an end user is not allowed to port a telephone number outside the rate center associated with that number, except when the customer purchases a foreign exchange offering from the new service provider.

ii) Resolved.

**STAFF:** Staff has no position on issue 46i. Staff notes that Issue 46ii is resolved.

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

This issue is resolved.

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

**POSITIONS**

**CA:** 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. However, AT&T's language provides CA with no recourse and instead, CA must absorb all of the costs of AT&T's error if the opposite occurs. 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.

**AT&T FLORIDA:** No. The provisioning dispatch terms and related charges are not reciprocal because CA purchases products/services from AT&T Florida, but AT&T Florida does not purchase products/services from CA. Therefore, the concept of parity is not meaningful here. Moreover, CA's language reflects a fundamental misunderstanding of how provisioning and repair issues are addressed. In the situation where service to a CA end user is not functioning even after AT&T Florida has done what it believes necessary to install or repair AT&T Florida's portion of the service, the appropriate next step is not for CA to dispatch one of its technicians to "resolve the problem caused by AT&T," as the language CA proposes states. Rather, the appropriate next step is for CA to make sure the issue is not on CA's portion of the service. If the problem is isolated to AT&T Florida's portion of the service, CA may create a trouble ticket and AT&T Florida will then take whatever steps are necessary to resolve the problem. In no circumstance should CA dispatch a technician to try to resolve a problem on AT&T Florida's side of the network.

**STAFF:** No position.

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

**POSITIONS**

**CA:** Yes, see above.

**AT&T FLORIDA:** No. See Summary Statement for Issue 48a.

**STAFF:** No position.

**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?**

This issue is 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?**

**POSITIONS**

**CA:** CA believes that it is entitled to order any element which AT&T is required to provide as a UNE, whether or not it is listed in this Agreement. CA language provides certainty so that the price and terms are agreed to before ordering, and provides adequate time to load the element into AT&T's systems.

**AT&T FLORIDA:** Yes. Under the 1996 Act, CA can only obtain UNEs or UNE combinations from AT&T Florida pursuant to the rates, terms and conditions in its ICA. It was therefore incumbent on CA to ensure that the ICA provided for all UNEs and UNE combinations that it wanted to obtain. CA's proposed language is contrary to controlling federal law, because it would allow CA to "pick and choose" terms from another ICA. Under the FCC's rules, a carrier can adopt provisions from another ICA only if it adopts the entire ICA. CA's asserted belief that it is entitled to

order any element that AT&T Florida is required to provide, whether or not it is in the ICA, is simply wrong. If CA were correct, there would be no need for it to obtain an ICA at all.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** CA believes its language is reasonable to prevent AT&T from arbitrarily and incorrectly denying UNE orders placed by CA claiming that no facilities exist when in fact they do exist, to which CA would otherwise have no recourse.

**AT&T FLORIDA:** No. The parties agree AT&T Florida is not required to provide a UNE if the facilities or equipment necessary to do so are not available. When AT&T Florida receives an order for a UNE, it checks its records and makes a good faith determination whether the necessary facilities are available. If AT&T Florida denies a CA UNE request on the basis of unavailability and CA believes the necessary equipment and facilities are in fact available, CA can pursue the matter with AT&T Florida and, if it remains skeptical, can invoke its right to dispute resolution and other remedies under the ICA. CA's proposed language is patently unreasonable, because it would require AT&T Florida to prove unavailability to CA's satisfaction, with CA the sole arbiter of when and if AT&T Florida has accomplished that. Furthermore, if CA chooses not to believe AT&T Florida's good faith representation that the necessary facilities are unavailable, it is hard to imagine how AT&T Florida could satisfy CA on that point, since CA could just as easily choose not to believe AT&T Florida's records.

**STAFF:** No position.

**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?**

This issue is resolved.



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

**POSITIONS**

**CA:**                   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.

**AT&T FLORIDA:** No. The agreed language for UNE section 2.3 is consistent with controlling federal law as reflected in 47 C.F.R. § 51.5, which limits commingling to linking a UNE with facilities or services obtained from AT&T Florida at wholesale. CA, however, seeks to undo that limitation by adding language that would allow it to commingle a UNE with "any other service element purchased from" AT&T Florida. CA's added language does not limit commingling to "wholesale" services or facilities, as the FCC's definition requires.

**STAFF:**               No position.

**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?**

**POSITIONS**

**CA:**                   CA cannot possibly transition its customer base to new service arrangements in 30 days. Moreover, 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. 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 a 180 day transition period so it seems well established that this is reasonable.

**AT&T FLORIDA:** Yes. CA should be aware well before it receives written notice from AT&T Florida that its UNEs or UNE combinations no longer meet eligibility criteria. Furthermore, the conversion of a UNE or UNE combination to an equivalent wholesale service does not require any facilities changes as CA claims, but is merely a rate change that AT&T Florida implements on CA's wholesale bill. Extending the notice period

to 180 days as CA proposes would unreasonably prolong CA's enjoyment of low prices to which it is no longer legally entitled, at AT&T Florida's expense.

**STAFF:** No position.

**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?**

**POSITIONS**

**CA:** 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. CA notes that the TRRO itself provided for a 180 day transition period, so it seems well established that this is reasonable.

**AT&T FLORIDA:** Yes. Thirty days following AT&T Florida's notice of wire center non-impairment is the appropriate timeframe for AT&T Florida to begin billing special access rates. Extending the notice period to 180 days as CA proposes would unreasonably prolong CA's enjoyment of low prices to which it is no longer legally entitled, at AT&T Florida's expense.

If it wishes, CA may self-certify utilizing the process set forth in the UNE Attachment. The wire center non-impairment process follows the FCC's TRRO, which provides CLECs an opportunity to self-certify and a timeline different from the 30-day special access billing.

**STAFF:** No position.

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

**POSITIONS**

**CA:** AT&T should provide actual written notice to CA for such major changes affecting CA. Simply posting a notice to a website with no further notice is unreasonable and could harm CA's customers without adequate warning for CA to prevent any disruption of services. 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. This clearly shows that AT&T's language is unreasonable and disparate.

**AT&T FLORIDA:** No. AT&T Florida provides notice of network changes via an Accessible Letter that is posted to CLEC Online, a website that is accessible to all CLECs. In addition, any CLEC that wants to receive individual notices, and thus not have to rely on checking CLEC Online, may subscribe to direct notices of Accessible Letters and, thus, email notice of wire center non-impairment designations will be sent to as many recipients as the CLEC wants. The Accessible Letter process, with the option of direct notices, is used by all AT&T ILECs and is accepted by the CLEC community. CA's proposal that the Commission require AT&T Florida to implement a different system for CA is unreasonable.

The transition period in AT&T Florida's proposed language for section 15.1.5 is appropriate for the reasons set forth in AT&T Florida's Summary Statement for Issue 54.

**STAFF:** No position.

**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?**

### **POSITIONS**

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

**AT&T FLORIDA:** No. There is no reasonable basis to include CA's proposed section 4.5.5 in the ICA. The language is overly broad and could inhibit AT&T Florida from maintaining its network in an efficient fashion. For instance, it may be necessary for AT&T Florida, in the course of maintaining and repairing its network, to switch CA's UNE from one facility to another to ensure the integrity of the UNE being provided to CA or to another CLEC. CA's language would prohibit that.

**STAFF:** No position.

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

**POSITIONS**

**CA:** It is well settled that CLECs are permitted to order and use UNEs as a part of a CLEC's network for any permissible purpose, subject to certifications and impairment restrictions contained elsewhere in this Agreement. CA does not believe that AT&T is entitled to specify exactly what CA may do or not do with UNEs to which CA is entitled.

**AT&T FLORIDA:** No. Federal law prohibits CLECs from using UNEs to provide service to themselves. The FCC's rules require AT&T Florida to provide UNEs to a CLEC only for the provision of telecommunications services to that CLEC's end-user customers. CA's objection that this language is overbroad is baseless. AT&T Florida's language is clear and appropriately limited to preventing CA from using UNEs to provide service to itself or for other administrative purposes. It will not impact CA's ability to provide service to its end-user customers.

**STAFF:** No position.

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

**POSITIONS**

**CA:** 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.

**AT&T FLORIDA:** No. Because 47 C.F.R. § 51.319 is the sole and exclusive list of UNEs, and multiplexing is not on the list, multiplexing is not a UNE. Multiplexing is available at rates in the ICA, however, when ordered in conjunction with unbundled dedicated transport to provide an enhanced extended loop (EEL). Multiplexing is necessary to combine loop and transport to provide an EEL, which “consists of a combination of an unbundled loop and unbundled dedicated transport, together with any facilities, equipment, or functions necessary to combine those network elements.” 47 C.F.R. § 51.5. AT&T Florida’s proposed language properly mirrors the FCC’s Rules and should be adopted.

**STAFF:** No position.

**ISSUE 59a:** **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?**

**POSITIONS**

**CA:** 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. 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 solely because it refuses to install the service that was ordered.

**AT&T FLORIDA:** No. CA, like all CLECs, has the responsibility to manage and track its inventory of DS1 loops. Accordingly, if CA has ten DS1 loops to a particular building, it should be aware of that fact, and of the fact that if it

orders an additional DS1 loop to that building, it must pay special access rates. It is not AT&T Florida's responsibility to manage CA's network or to provide notice of CA's failure to manage its network. To require AT&T Florida to install a DS1 as a UNE in a building in which CA already has ten DS1s would enable CA to enjoy UNE rates to which it is not legally entitled at AT&T Florida's expense.

**STAFF:** No position.

**ISSUE 59b:** **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?**

**POSITIONS**

**CA:** See above.

**AT&T FLORIDA:** No. CA, like all CLECs, has the responsibility to manage and track its inventory of DS3 loops. Accordingly, if CA already has a DS3 loop to a particular building, it should be aware of that fact, and of the fact that if it orders another DS3 loop to that building, it must pay special access rates. It is not AT&T Florida's responsibility to manage CA's network or to provide notice of CA's failure to manage its network. To require AT&T Florida to install a DS3 as a UNE in a building in which CA already has a DS3 would allow CA to enjoy UNE rates to which it is not legally entitled at AT&T Florida's expense.

**STAFF:** No position.

**ISSUE 59c:** **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?**

**POSITIONS**

**CA:** See above.

**AT&T FLORIDA:** No. This is essentially the same issue as Issues 59a and 59b, but in this instance it pertains not to loops, but to DS1 and DS3 dedicated transport. See Summary Statements for Issues 59a and 59b.

**STAFF:** No position.

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

**POSITIONS**

**CA:** 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. 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.

**AT&T FLORIDA:** Yes. Section 251(c)(4) of the 1996 Act plainly states that AT&T Florida is only obligated to offer its retail services for resale at a wholesale discount to subscribers who are not telecommunications carriers. Therefore, CA is not entitled to the wholesale discount on lines obtained for its own use. CA's affiliates also should not be given the opportunity to avoid legitimate restrictions on resale by using lines CA obtains for resale from AT&T Florida.

**STAFF:** No position.

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

**POSITIONS**

**CA:** CA believes that its position is directly support by FCC regulations that it cited AT&T has cited no regulatory or legal decision in support of its position. Further CA notes that it would be unable to file billing disputes under the agreed billing disputes language if it did not receive detailed billing from AT&T as required by CA's proposed language.

**AT&T FLORIDA:** AT&T Florida's language, which was predominantly drafted by CA, should be adopted because it provides CA with the ability to obtain detailed billing information on resale lines that would enable CA to bill its end users. CA can select the level of detail it desires via its CLEC Online profile. CA's language requiring full compliance with FCC Order 99-72 is inappropriate for an ICA. The FCC's billing rules in 47 C.F.R. §§

64.2400 and 2401, upon which CA relies, relate to retail bills to consumers, not resale bills to other carriers.

**STAFF:** No position.

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

**POSITIONS**

**CA:** 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.

**AT&T FLORIDA:** Yes. In a resale situation, a CLEC purchases in its entirety the existing retail service being provided to the CLEC's customer. Since AT&T Florida's OS/DA services are provided in conjunction with AT&T Florida's retail services, they are automatically provided with resale services CA purchases. If CA desires to remove the OS/DA service from a resale line, it must order the appropriate blocking and pay any applicable charges.

**STAFF:** No position.

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

**POSITIONS**

**CA:** See above.

**AT&T FLORIDA:** No. See Summary Statement for Issue 62a.

**STAFF:** No position.

**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?**



This issue is resolved.

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

**POSITIONS**

**CA:**                   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. 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&T FLORIDA:**   AT&T Florida must receive listing information from CA within one business day of installation or other change in service to ensure that the listed customer's information is timely and accurately reflected in the listing database. AT&T Florida and other CLECs in Florida comply with this requirement. To allow CA to provide information at random intervals would disrupt and degrade the accuracy of OS/DA and directory listing database information for AT&T Florida as well as CLECs.

**STAFF:**               No position.

**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?**

**POSITIONS**

**CA:**                   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.

**AT&T FLORIDA:**   No. Section 222 of the Communications Act governs the uses to which AT&T Florida and its affiliates may or may not put customer information. AT&T Florida's language appropriately requires compliance with Section

222; CA's language goes beyond that and attempts to impose obligations and limitations on AT&T Florida that are not consistent with Section 222.

**STAFF:** No position.

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

**POSITIONS**

**CA:** The Commission last reviewed AT&T's rates ten years ago, at which time the ILEC was Bellsouth which had substantially less market dominance and purchasing power as does AT&T today. 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. 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.

**AT&T FLORIDA:** The AT&T Florida rates that CA disputes are the standard prices that AT&T Florida charges to CLECs in Florida. They are (1) TELRIC-based rates that the Commission has approved; (2) resale prices that reflect the Commission-established wholesale discount; or (3) market-based prices for products that are not subject to the pricing standards imposed by the 1996 Act or, therefore, to regulation by the Commission in this proceeding. CA has provided no basis for its request that the Commission impose rates that are different from those the Commission has already approved or for its request that the Commission regulate in this proceeding prices that are not subject to the pricing standards in the 1996 Act.

**STAFF:** No position.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct and Rebuttal*</u>			
Patricia H. Pellerin	AT&T Florida	PHP-1	Interconnection Agreement
Patricia H. Pellerin	AT&T Florida	PHP-2	Performance Metrics – Mean Time to Deliver Invoices
Patricia H. Pellerin	AT&T Florida	PHP-3	CA Response to AT&T Florida Interrogatory No. 13
Patricia H. Pellerin	AT&T Florida	PHP-4	Performance Metrics – Percent Missed Installation Appointments
Patricia H. Pellerin	AT&T Florida	PHP-5	Performance Metrics – Order Completion Interval
Patricia H. Pellerin	AT&T Florida	PHP-6	CA Response to Staff Interrogatory No. 7
Patricia H. Pellerin	AT&T Florida	PHP-7	CA Response to Staff Interrogatory No. 8
Patricia H. Pellerin	AT&T Florida	PHP-8	CA Response to Staff Interrogatory No. 9
Patricia H. Pellerin *	AT&T Florida	PHP-9	CA Response to AT&T Florida Request for Admission No. 58
Patricia H. Pellerin *	AT&T Florida	PHP-10	Email Friedman to Twomey, January 14, 2015
Patricia H. Pellerin *	AT&T Florida	PHP-11	Email Twomey to Friedman, January 22, 2015
Patricia H. Pellerin *	AT&T Florida	PHP-12	Email Friedman to Twomey, January 23, 2015
Patricia H. Pellerin*	AT&T Florida	PHP-13	Email Friedman to Twomey, January 27, 2015
Patricia H. Pellerin *	AT&T Florida	PHP-14	Email Twomey to Friedman, January 27, 2015

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Patricia H. Pellerin *	AT&T Florida	PHP-15	Email Friedman to Twomey, February 6, 2015
Patricia H. Pellerin *	AT&T Florida	PHP-16	Email Friedman to Twomey, February 11, 2015
Patricia H. Pellerin *	AT&T Florida	PHP-17	CA Response to AT&T Florida Interrogatory No. 64
Patricia H. Pellerin *	AT&T Florida	PHP-18	Email Friedman to Twomey, January 29, 2015
Patricia H. Pellerin *	AT&T Florida	PHP-19	CA Response to AT&T Florida Interrogatory No. 110
Susan Kemp	AT&T Florida	SK-1	Vendor Approval Process for AT&T 21-State LEC Approved Central Office Installation Vendors
Susan Kemp	AT&T Florida	SK-2	Photos of Common Support Structure
Scott McPhee *	AT&T Florida	SM-1	CA Response to AT&T Florida Interrogatory No. 84
Scott McPhee *	AT&T Florida	SM-2	CA Response to AT&T Florida RFA No. 69
Scott McPhee *	AT&T Florida	SM-3	CA Response to AT&T Florida Interrogatory No. 97

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

The parties have resolved the following issues 15i, 17i, 21, 26, 28i, 28ii, 31, 39a, 39b, 42, 46ii, 47, 49, 52 and 63.

XI. PENDING MOTIONS

There are no pending motions.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality requests.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 250 pages, excluding attachments, and shall be filed at the same time.

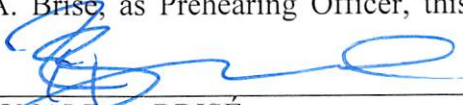
XIV. RULINGS

Opening statements, if any, shall not exceed seven and a half minutes per party.

It is therefore,

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 30th day  
of April, 2015.



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RONALD A. BRISÉ  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

TLT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.