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August 20, 2014

Ms. Ann Cole
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Petition for Arbitration of Interconnection Agreement between Communications Authority, Inc. and BellSouth Telecommunications, LLC dba AT&T Florida

Dear Ms. Cole:

On behalf of my client Communications Authority, Inc., please find attached herein Communications Authority, Inc's Petition for Section 252(b) Arbitration with BellSouth Telecommunications, LLC d/b/a AT&T Florida. We request a new docket be opened for this filing. Copies have been served to the parties shown on the attached certificate of service.

Respectfully submitted,

Kristopher E. Twomey
Counsel to Communications Authority, Inc.

Enc.

Law Office of Kristopher E. Twomey, P.C.
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Certificate of Service

Petition for Arbitration of Interconnection Agreement between Communications Authority, Inc. and BellSouth Telecommunications, LLC dba AT&T Florida

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail this 20th day of August, 2014 to the following:

Adam Teitzman, Staff Counsel
Florida Public Service Commission
2540 Shumard Oaks Blvd.
Tallahassee, FL 32399
ateitzma@psc.state.fl.us

Deborah A. Verbil
AT&T, Inc.
General Attorney
208 S. Akard
Dallas, TX 75202
dv1728@att.com

_____

Kristopher E. Twomey

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Petition for Arbitration of Interconnection Agreement Between AT&T Telecommunications, LLC d/b/a/ AT&T Florida and Communications Authority, Inc.	)))	Docket # _____ Filed: August 20, 2014

PETITION OF COMMUNICATIONS AUTHORITY, INC. FOR SECTION 252(b) ARBITRATION

Pursuant to Section 252(b) of the Telecommunications Act of 1996 ("the Act"), Communications Authority, Inc. files this Petition for Arbitration ("Petition") seeking resolution of certain issues arising between BellSouth Telecommunications, LLC d/b/a AT&T Florida and Communications Authority, Inc. in the negotiation of an interconnection agreement ("ICA"). Communications Authority, Inc. states as follows:

A. STATEMENT OF FACTS

1. Communications Authority, Inc. ("CA") is a corporation organized and existing under the laws of the State of Florida with its principal place of business at 11523 Palm Brush Trail, #401, Lakewood Ranch, Florida. Communications Authority, Inc. is a competitive local exchange carrier ("CLEC") as defined by the Act, and is licensed to provide local exchange telecommunications services in the State of Florida. Communications Authority's representatives are as follows:

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Mike Ray
President
Communications Authority, Inc.
11523 Palm Brush Trail #401
Lakewood Ranch, FL 34202
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mike@commauthority.com

2. BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T") is a limited liability corporation organized and existing under the laws of the State of Florida with its principal place of business at 150 South Monroe Street, Suite 400, Tallahassee, Florida. AT&T is an incumbent local exchange carrier ("ILEC") as defined in 47 USC 251(h) and is licensed as an incumbent local exchange carrier in the State of Florida.

B. JURISDICTION AND TIMING

3. The parties began negotiation for a new interconnection agreement by mutual agreement on March 16, 2014. On June 10, 2014, the parties agreed to an extension of negotiations and moving the arbitration window accordingly. See Exhibit A. As such, either party is entitled to file for arbitration under Section 252(b)(l) of the Act between July 28, 2014 and August 22, 2014, which dates correspond to the prescribed arbitration window which are days 135 to days 160, inclusive. Therefore, this petition is timely filed.

4. Section 252(b)(4)(c) of the Act requires the Commission to render a decision in this proceeding within nine months after the date upon which the request for interconnection negotiations was received. Accordingly, the Act requires the Commission to render a decision in this proceeding, absent an agreed extension, not later than December 16, 2014. Given the extension and the number of issues to be resolved in this proceeding, the parties will likely need to waive this requirement.

C. ISSUES FOR ARBITRATION

5. Although the parties have engaged in negotiations, many open issues remain. CA has not received responses from AT&T on more than 75% of the issues that it has raised in the negotiation, and CA hopes that responses may still be forthcoming and will result in a narrowing of these open issues to be arbitrated by the Commission.

6. The issues are as follows:
   Issue #1: CA use of Unbundled Network Elements for use in providing information services
   Issue #2: Requirement to permit CA to become an Approved Installation Supplier (AIS) in a timely, non-discriminatory manner in order to perform its own installations
   Issue #3: Restriction upon UNE "Cable Records Charges" which are not cost-based
   Issue #4: Revising the definition of "Unused Space" for clarity
   Issue #5: CA has a right to collocate NEBS-compliant equipment in AT&T Central Offices and should not be charged by AT&T if AT&T performs a redundant "safety review"

Issue #6: CA should not be expelled from collocations if AT&T alleges default by CA while the dispute resolution process has been invoked but not concluded
Issue #7: CA must be given reasonable time to obtain required insurance
Issue #8: AT&T may not charge CA for security upgrades unless due to CA misconduct
Issue #9: AT&T may not charge CA for collocation application modifications which do not increase AT&T's costs
Issue #10: AT&T should not charge for collocation until it has been delivered correctly
Issue #11: CA should be given adequate time to construct network facilities
Issue #12: CA should be permitted to directly connect to other Central Office Collocators
Issue #13: AT&T should not be permitted to arbitrarily remove CA collocated equipment
Issue #14: The due date of a bill should be extended if it is received late by CA
Issue #15: AT&T should not disconnect service based upon disputed amounts
Issue #16: CA is not in default for non-payment of properly disputed charges
Issue #17: The Parties each have a right to seek remedy from the Commission for unjust terms
Issue #18: Agreement should be severable in the event any term or condition is found invalid
Issue #19: Only the parties to this agreement may be bound by this agreement
Issue #20: Each party must bear its own costs for network interconnection
Issue #21: CA need not obtain insurance to insure services it has not ordered or used
Issue #22: CA insurance requirements should reflect the size of CA's operations
Issue #23: CA should not be required to purchase fire damage insurance if not collocating
Issue #24: CA General Liability Limits should be reasonable when collocating
Issue #25: AT&T should not unreasonably prevent the acquisition or sale of CA
Issue #26: CA should be entitled to a five year term of this agreement
Issue #27: AT&T may not terminate Agreement for disputed breach by CA
Issue #28: AT&T may not refuse to negotiate a successor agreement based solely upon CA's failure to pay disputed charges
Issue #29: AT&T should not draw upon CA's deposit/LOC without cause
Issue #30: CA should not incur Late Payment Charges because of AT&T posting delays
Issue #31: If CA provides complete information, it should not have to use AT&T's special disputes form
Issue #32: CA should not be required to pay disputed charges into escrow
Issue #33: AT&T should not be permitted to disconnect CA service for non-payment of disputed amounts without following the Dispute Resolution provisions
Issue #34: AT&T should provide CA's dispute ID number when crediting CA disputes
Issue #35: Eliminate agreement language that does not apply to Florida
Issue #36: CA's time window to dispute a bill should begin when the bill is received by CA
Issue #37: CA should be entitled to dispute a class of charges as one line item

Issue #38: CA should not lose its right to dispute charges solely because they are unpaid
Issue #39: The Commission retains jurisdiction to decide all disputes between the parties
Issue #40: CA should not indemnify AT&T for gross negligence or willful misconduct
Issue #41: Each party is responsible for the actions of its employees, agents, affiliates
Issue #42: CA is only responsible for damage caused by its actions and those of its agents
Issue #43: AT&T may not arbitrarily disconnect CA Unbundled Network Elements
Issue #44: Taxes must be billed as a separate line item
Issue #45: AT&T may not unreasonably deny CA exemption from taxes
Issue #46: CA should be permitted to purchase 911 service for its network from any carrier
Issue #47: Correct AT&T's incorrect definition of Entrance Facilities
Issue #48: AT&T's archaic, unnecessary FX language would prohibit use of VoIP
Issue #49: If required to establish an additional POI, CA may use UNE IDT to reach that POI
Issue #50: Clarify that CA is only responsible for the cost of trunks on its side of the POI
Issue #51: A CA collocation in a AT&T Central Office can be designated as the POI
Issue #52: CA should be entitled to use a tandem provider of its choice for its own network
Issue #53: AT&T may not mandate CA to purchase unnecessary HVCI trunks
Issue #54: CA should be entitled to VoIP/VuIP Interconnection if AT&T offers it to others
Issue #55: AT&T may not require CA to purchase interLATA trunks from AT&T
Issue #56: AT&T should not be able to redefine terms of this Agreement in its tariff
Issue #57: Each party should use the most recent PLU/PLF factors submitted by the other
Issue #58: AT&T should not conduct costly audits at CA expense over minor discrepancy
Issue #59: Interest charges for unpaid amounts are not added to Late Payment Charges
Issue #60: HDSL loops are distinct from HDSL-capable loops
Issue #61: Customers need not switch service from CA to AT&T to convey a number
Issue #62: AT&T may not impose arbitrary restrictions upon number portability
Issue #63: Both parties must obtain authorization before submitting CSR or LSR requests
Issue #64: Neither party may charge any fee to the other to obtain Local Number Portability
Issue #65: AT&T must provide reasonable means to promptly address ordering issues
Issue #66: Neither party may prolong outages of the other party by avoiding direct contact
Issue #67: AT&T should not charge CA for orders that AT&T caused to be inaccurate
Issue #68: CA may set its own FOC policy for its network, not dictated by AT&T
Issue #69: Both parties should compensate each other for unnecessary field dispatches
Issue #70: CA's pole attachments should be held to the same standard as AT&T's
Issue #71: CA is entitled to any UNE offered by AT&T to another CA at same price

Issue #72: When denying CA request for UNEs, AT&T must prove they do not exist
Issue #73: CA does not waive any rights to obtain UNEs now or in the future
Issue #74: CA may commingle any UNE element with any non-UNE element that is feasible
Issue #75: AT&T may not arbitrarily restrict UNE availability
Issue #76: AT&T may not charge "market-based rates" for UNEs at any time
Issue #77: CA must have adequate transition time when a UNE is being sunset
Issue #78: AT&T must send notices of major network changes, not just post to website
Issue #79: AT&T may not take in-service CA UNEs to provision service for its customers
Issue #80: CA may use Unbundled Network Elements in its own network for any purpose
Issue #81: Multiplexing (muxing) is not a component of an EEL arrangement
Issue #82: AT&T must provide notice to CA before converting UNEs to special access
Issue #83: CA may order and resell AT&T Resale service in any lawful manner
Issue #84: AT&T shall comply with detailed billing requirements for Resale services
Issue #85: CA may opt out of OS/DA service for its subscribers; both facilities and resale
Issue #86: CA is not required to provide AT&T with its subscriber information or pay for non-published numbers which belong to CA non-resale customers
Issue #87: AT&T does not control the timing of CA order processing for CA customers
Issue #88: CA retains control of its own facilities-based customers' directory listings
Issue #89: AT&T may not use CA CPNI for winback or marketing campaigns
Issue #90: Reimbursement for breach of Agreement should be in parity, not one-sided
Issue #91: AT&T may only terminate services that it is not required to provide to CA

7. CA submits herewith Exhibit B which identifies the issues and respective parties' positions set forth for arbitration. Exhibit B contains an issue number for each discrete issue and each issue appears in one or more locations within the Interconnection Agreement draft ("Draft" or "Agreement"). Where an issue appears multiple times in the Draft, sub-issues have been listed alphabetically (i.e., 1a., 1b. etc.). The proposed language for each party regarding the issue is shown with CA's proposed edits to the Draft highlighted in bold font. CA's comments regarding the issue are provided as well.

8. CA submits herewith Exhibit C containing pricing issues to be addressed during the arbitration. AT&T failed to negotiate any pricing issues during the course of negotiations.

9. CA submits herewith Exhibit D providing a list of issues raised by CA that were resolved through negotiations with AT&T.

10. Pursuant to 47 USC 252(b)(2)(B), CA is providing a copy of this Petition and the accompanying documentation to AT&T on the day on which this Petition is filed with the Commission.

WHEREFORE, CA respectfully requests that the Commission arbitrate the open issues set forth in this Petition, and enter an Order directing that CA's positions on the issues raised herein be incorporated into a final, approved interconnection agreement between AT&T Florida and Communications Authority, Inc. Further, CA requests such other relief as the Commission deems just and proper under the circumstances.

Respectfully submitted this 20th day of August, 2014.

COMMUNICATIONS AUTHORITY, INC.

_____

Kristopher E. Twomey
Counsel to Communications Authority, Inc.

EXHIBIT A

Arbitration Window Extension Letter

EXHIBIT B

Unresolved Issues

Issue #1a: CA use of Unbundled Network Elements for use in providing information services

First Instance Appears: Collocation, 1.1

AT&T proposed language:

> This Attachment sets forth the terms and conditions pursuant to which the applicable AT&T-owned Incumbent Local Exchange Carrier (ILEC) will provide Physical and Virtual Collocation pursuant to 47 U.S.C. § 251(c)(6). AT&T 21STATE will provide Collocation arrangements at the rates, terms and conditions set forth herein. Collocation is available to CA for the placement of Telecommunications Equipment as provided for in this Attachment solely for the purposes of (i) transmitting and routing Telephone Exchange Service or Exchange Access pursuant to 47 U.S.C. § 251(c)(2) of the Act and applicable effective FCC regulations and judicial rulings, or (ii) obtaining access to AT&T 21STATE's 251(c)(3) Unbundled Network Elements (UNEs) for the purpose of providing Telecommunications Service pursuant to 47 U.S.C. § 251(c)(3) of the Act and effective FCC rules and associated and effective FCC and judicial orders.

CA proposed language:

> This Attachment sets forth the terms and conditions pursuant to which the applicable AT&T-owned Incumbent Local Exchange Carrier (ILEC) will provide Physical and Virtual Collocation pursuant to 47 U.S.C. § 251(c)(6). AT&T 21STATE will provide Collocation arrangements at the rates, terms and conditions set forth herein. Collocation is available to CA for the placement of Telecommunications Equipment as provided for in this Attachment solely for the purposes of (i) transmitting and routing Telephone Exchange Service or Exchange Access pursuant to 47 U.S.C. § 251(c)(2) of the Act and applicable effective FCC regulations and judicial rulings, or (ii) obtaining access to AT&T 21STATE's 251(c)(3) Unbundled Network Elements (UNEs) for the purpose of providing Telecommunications Service pursuant to 47 U.S.C. § 251(c)(3) of the Act and effective FCC rules and associated and effective FCC and judicial orders, **or (iii) obtaining access to to AT&T-21STATE's 251(c)(3) Unbundled Network Elements (UNEs) for the purpose of providing Information Service.**

CA comments:

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. AT&T's affiliate, AT&T U-Verse, uses UNE facilities provided by AT&T for the provision of information services. CA believes that AT&T's proposed restriction is anti-competitive and not supported by the Act or Commission regulations.

Issue #1b: CA use of Unbundled Network Elements for use in providing information services

Second Instance Appears: UNEs, 4.1

AT&T proposed language:

> AT&T-21STATE will provide access to UNEs for the provision by CA of a Telecommunications Service (Act, Section 251(c)(3)).

CA proposed language:

> **AT&T-21STATE will provide access to UNEs for use by CA in any technically feasible manner.**

CA comments:

> See comments to 1a above.

Issue #2: Requirement to permit CA to become an Approved Installation Supplier (AIS) in a timely, non-discriminatory manner in order to perform its own installations

Appears: Collocation, 1.7.3

AT&T proposed language:

> The Collocation terms and conditions within this Attachment are contingent upon Collocator doing its own work through the use of an **AT&T-21STATE** Approved Installation Supplier (AIS).

CA proposed language:

> The Collocation terms and conditions within this Attachment are contingent upon Collocator doing its own work through the use of an **AT&T-21STATE** Approved Installation Supplier (AIS). **Collocator shall be entitled to become an AT&T-21STATE Approved Installation Supplier (AIS) within a reasonable period of time for the purpose of performing work related to its own collocation(s), using criteria no more restrictive than that applied by AT&T-21STATE to any other AIS**.

CA comments:

AT&T requires CA to hire a 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. 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 creates an artificial barrier to entry by CLECs 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.

Issue #3: Restriction upon UNE "Cable Records Charges" which are not cost-based

Appears: Collocation, 2.5

AT&T proposed language:

> "Cable Records Charges" in AT&T SOUTHEAST REGION 9-STATE only means the applicable charges for work activities required to build or remove existing cable records assigned to Collocators in AT&T SOUTHEAST REGION 9-STATE's database systems. The applicable rates and charges are shown in the Pricing Schedule.

CA proposed language:

> "Cable Records Charges" in AT&T SOUTHEAST REGION 9-STATE only means the applicable charges for work activities required to build or remove existing cable records assigned to Collocators in AT&T SOUTHEAST REGION 9-STATE's database systems. **The applicable rates and charges are shown in the Pricing Schedule. Regardless of the Pricing Schedule, Cable Record Charges shall not exceed 0.20 per record for any record, change or removal.**

CA comments:

It is well established that ILEC charges to CLECs for interconnection and unbundled network elements should be cost-based. AT&T has a history of charging CLECs more to enter the records for new cross-connect cables into its databases than the actual materials and labor costs for the same installation. These "cables records charges" are not cost-based and are in fact an artificial barrier to entry for CLECs created by AT&T. CA has proposed this revision in order to ensure that cable records charges are always cost based and remove the barrier to entry. CA has agreed to move this language to the pricing schedule, but has re-opened the issue because AT&T failed to respond at all to CA's pricing schedule revisions.

Issue #4: Revising the definition of "Unused Space" for clarity

Appears: Collocation, 2.31

AT&T proposed language:

> "Unused Space" means any space (i) existing in **AT&T-21STATE**'s Eligible Structures at the time of a Collocation request, (ii) that is not subject to a valid space reservation by **AT&T-21STATE** or any Third Party, (iii) that is not occupied by **AT&T-21STATE**'s, its Affiliates', or Third Party's equipment, and is not needed for access to, or egress from, work areas (iv) that is not being used by **AT&T-21STATE**'s or its Affiliates for administrative or other functions and (v) on or in which the placement of any equipment or network facilities (**AT&T-21STATE**'s or Requesting Collocator's) would not violate any local or state law, rule or ordinance (e.g., fire, OSHA, or zoning) or technical standards (performance or safety) or would void **AT&T-21STATE**'s warranty on proximate

CA proposed language:

> "Unused Space" means any space (i) existing in **AT&T-21STATE**'s Eligible Structures at the time of a Collocation request, (ii) that is not subject to a valid space reservation by **AT&T-21STATE** or any Third Party, (iii) that is not occupied by **AT&T-21STATE**'s, its Affiliates', or Third Party's equipment, and is not needed for access to, or egress from, work areas (iv) that is not being used by **AT&T-21STATE**'s or its Affiliates for administrative or other functions and (v) on or in which the placement of any equipment or network facilities (**AT&T-21STATE**'s or Requesting Collocator's) would not violate any local or state law, rule or ordinance (e.g., fire, OSHA, or zoning) or technical standards (performance or safety) or would void **AT&T-21STATE**'s warranty on proximate **equipment.**

CA comments:

CA simply added the word "equipment" to the end of this paragraph so that it makes sense. AT&T has refused to accept this simple change without explanation.

Issue #5a: CA has a right to collocate NEBS-compliant equipment in AT&T Central Offices and should not be charged by AT&T if AT&T performs a redundant "safety review"

First Instance Appears: Collocation, 3.17.2

AT&T proposed language:

> AT&T-21STATE posts the list of Safety compliant equipment on the "All Equipment List (AEL)" for the Collocator's reference on AT&T CA Online website. When the Collocator's equipment is not listed on the approved AEL, the equipment will be reviewed for safety by AT&T-21STATE and written approval or denial of the equipment will be forwarded to the Collocator. The AEL list is available to Collocators via the AT&T CA Online website. Inclusion of the equipment on the AEL does not mean that it meets the requirements of "necessary equipment" and thus does not mean that the equipment may be collocated.

CA proposed language:

> AT&T-21STATE posts the list of Safety compliant equipment on the "All Equipment List (AEL)" for the Collocator's reference on AT&T CA Online website. When the Collocator's equipment is not listed on the approved AEL**, and does not meet NEBS Level 1 safety requirements as set forth in TP-76200**, the equipment will be reviewed for safety by AT&T-21STATE and written approval or denial of the equipment will be forwarded to the Collocator. **Such review shall include whether the equipment meets the NEBS Level 1 safety requirements, or their equivalent, as set forth in TP-76200. CA shall not be charged for this review process, regardless of outcome.** The AEL list is available to Collocators via the AT&T CA Online website. Inclusion of the equipment on the AEL does not mean that it meets the requirements of "necessary equipment" and thus does not mean that the equipment may be collocated.

CA comments:

The NEBS-1 equipment safety standard is used universally by telecommunications carriers as the safety standard for central office equipment. AT&T's language proposes that it has the right to deny CA the ability to collocate equipment even if it is NEBS-1 certified. This denial is discriminatory, because it would permit AT&T to deny CA the ability to collocate equipment that has already met the relevant safety standard, for reasons other than safety. CA has also added a provision that CA shall not be charged for AT&T's review process, because if the CA has already supplied the NEBS compliance information there is no need for a separate "safety review" by AT&T, which would simply impose unnecessary and arbitrary fees and costs upon the CA in a discriminatory manner, constructing a barrier to entry.

Issue #5b: CA has a right to collocate NEBS-compliant equipment in AT&T Central Offices and should not be charged by AT&T if AT&T performs a redundant "safety review"

Second Instance Appears: Collocation, 3.17.3.1

AT&T proposed language:

> The Collocator shall furnish to AT&T-21STATE a written list in the form of an attachment to the original Equipment List for the subsequent placement of equipment in its Dedicated or Virtual Collocation Space. When the Collocator's equipment is not listed in the approved All Equipment List (AEL) the equipment will be reviewed by AT&T-21STATE and written approval or denial of the equipment will be forwarded to the Collocator. The additional equipment will also be reviewed as to whether it is "necessary equipment". Only if the equipment passes both reviews may it be collocated.

CA proposed language:

> The Collocator shall furnish to AT&T-21STATE a written list in the form of an attachment to the original Equipment List for the subsequent placement of equipment in its Dedicated or Virtual Collocation Space. When the Collocator's equipment is not listed in the approved All Equipment List (AEL) the equipment will be reviewed by AT&T-21STATE and written approval or denial of the equipment will be forwarded to the Collocator. The additional equipment will also be reviewed as to whether it is "necessary equipment". Only if the equipment passes both reviews may it be collocated. **CA shall not be charged for submission of the attachment to the Equipment List or for this review process, regardless of outcome**.

CA comments:

> See comments to 5a above.

Issue #6a: CA should not be expelled from collocations if AT&T alleges default by CA while the dispute resolution process has been invoked but not concluded

First instance appears: Collocation, 3.20.1

AT&T proposed language:

> If the Collocator shall default in performance of any provision herein, and the default shall continue for sixty (60) calendar days after receipt of AT&T-21STATE's written Notice, or if the Collocator is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, AT&T-21STATE may, immediately or at any time thereafter, without notice or demand, enter and repossess the Dedicated Space, expel the Collocator and any claiming under the Collocator, remove the Collocator's property and dispose of such abandoned equipment. Also, services provided pursuant to this Attachment will be terminated without prejudice to any other remedies.

CA proposed language:

> If the Collocator shall default in performance of any provision herein, and the default shall continue for sixty (60) calendar days after receipt of AT&T-21STATE's written Notice, or if the Collocator is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, AT&T-21STATE may, immediately or at any time thereafter, without notice or demand, enter and repossess the Dedicated Space, expel the Collocator and any claiming under the Collocator, remove the Collocator's property and dispose of such abandoned equipment. Also, services provided pursuant to this Attachment will be terminated without prejudice to any other remedies. **This provision shall not apply until the conclusion of any dispute resolution process initiated by either party under this agreement where CA has disputed the alleged default, including any regulatory proceeding, litigation or appellate proceeding.**

CA comments:

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, 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.

Issue #6b: CA should not be expelled from collocations if AT&T alleges default by CA but the dispute resolution process has been invoked and not concluded

Second instance appears: Collocation, 3.20.2

AT&T proposed language:

> AT&T-21STATE may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service for the Collocator at any time after sending the Notice required by the preceding Section.

CA proposed language:

> AT&T-21STATE may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service for the Collocator at any time after sending the Notice required by the preceding Section. **This provision shall not apply until the conclusion of any dispute resolution process initiated by either party under this agreement where CA has disputed the alleged default, including any regulatory proceeding, litigation or appellate proceeding.**

CA comments:

> See comments to 6b above.

Issue #7: CA must be given reasonable time to obtain required insurance

Appears: Collocation, 4.6.2

AT&T proposed language:

> A certificate of insurance stating the types of insurance and policy limits provided the Collocator must be received prior to commencement of any work. If a certificate is not received, AT&T-21STATE will notify the Collocator, and the Collocator will have **five (5) Business Days** to cure the deficiency. If the Collocator does not cure the deficiency within **five (5) Business Days**, Collocator hereby authorizes AT&T-21STATE, and AT&T-21STATE may, but is not required to, obtain insurance on behalf of the Collocator as specified herein. AT&T-21STATE will invoice Collocator for the costs incurred to so acquire insurance.

CA proposed language:

> A certificate of insurance stating the types of insurance and policy limits provided the Collocator must be received prior to commencement of any work. If a certificate is not received, AT&T-21STATE will notify the Collocator, and the Collocator will have **thirty (30) days** to cure the deficiency. If the Collocator does not cure the deficiency within **thirty (30) days and the Collocator has already commenced work**, Collocator hereby authorizes AT&T-21STATE, and AT&T-21STATE may, but is not required to, obtain insurance on behalf of the Collocator as specified herein. AT&T-21STATE will invoice Collocator for the costs incurred to so acquire insurance.

CA comments:

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.

Issue #8: AT&T may not charge CA for security upgrades unless due to CA misconduct

Appears: Collocation, 4.11.3.4

AT&T proposed language:

> AT&T-21STATE may use reasonable security measures to protect its equipment. In the event AT&T-21STATE elects to erect an interior security partition in a given Eligible Structure to separate its equipment, AT&T-21STATE may recover the costs of the partition in lieu of the costs of other reasonable security measures if the partition costs are lower than the costs of any other reasonable security measure for such Eligible Structure. In no event shall a Collocator be required to pay for both an interior security partition to separate AT&T-21STATE's equipment in an Eligible Structure and any other reasonable security measure for such Eligible Structure. If AT&T-21STATE elects to erect an interior security partition and recover the cost, it must demonstrate to the Physical Collocator that other reasonable security methods cost more than an interior security partition around AT&T-21STATE's equipment at the time the price quote is given.

CA proposed language:

> AT&T-21STATE may use reasonable security measures to protect its equipment. In the event AT&T-21STATE elects to erect an interior security partition in a given Eligible Structure to separate its equipment, AT&T-21STATE may recover the costs of the partition in lieu of the costs of other reasonable security measures if the partition costs are lower than the costs of any other reasonable security measure for such Eligible Structure. In no event shall a Collocator be required to pay for both an interior security partition to separate AT&T-21STATE's equipment in an Eligible Structure and any other reasonable security measure for such Eligible Structure. If AT&T-21STATE elects to erect an interior security partition and recover the cost, it must demonstrate to the Physical Collocator that other reasonable security methods cost more than an interior security partition around AT&T-21STATE's equipment at the time the price quote is given. **This provision shall only apply if CA or any agent of CA has been proven to have committed any wrongdoing or violation of this agreement on AT&T property, and the measures taken by AT&T for which recovery is sought would protect AT&T from that wrongdoing or breach by CA in the future.**

CA comments:

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.

Issue #9a: AT&T may not charge CA for collocation application modifications which do not increase AT&T's costs

First instance appears: Collocation, 7.4.1

AT&T proposed language:

> If a modification or revision is made to any information in the Application after AT&T-21STATE has provided the Application response and prior to a BFFO, with the exception of modifications to (1) Customer Information, (2) Contact Information or (3) Billing Contact Information, whether at the request of Collocator or as necessitated by technical considerations, the Application shall be considered a new Application and handled as a new Application with respect to the response and provisioning intervals. AT&T-21STATE will charge Collocator the appropriate Application/Augment fee associated with the level of assessment performed by AT&T-21STATE.

CA proposed language:

> If a modification or revision is made to any information in the Application after AT&T-21STATE has provided the Application response and prior to a BFFO, with the exception of modifications to (1) Customer Information, (2) Contact Information or (3) Billing Contact Information, whether at the request of Collocator or as necessitated by technical considerations, the Application shall be considered a new Application and handled as a new Application with respect to the response and provisioning intervals. AT&T-21STATE will charge Collocator the appropriate Application/Augment fee associated with the level of assessment performed by AT&T-21STATE. **This provision shall not apply if AT&T-21STATE requested or required the revision or modification, in which case no additional charges shall apply. This provision shall not apply if the revision results in no change in the number, type or size of cables, or floor space, and has no other cost impact on AT&T-21STATE.**

CA comments:

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 a UNE and UNEs are intended to be cost-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.

Issue #9b: AT&T may not charge CA for collocation application modifications which do not increase AT&T's costs

Second instance appears: Collocation, 7.4.2

AT&T proposed language:

> Once AT&T-21STATE has provided the BFFO/quote and CA has accepted and authorized AT&T-21STATE to begin construction, any further modifications and/or revisions must be made via a subsequent Collocation Application and the appropriate fees will apply.

CA proposed language:

> Once AT&T-21STATE has provided the BFFO/quote and CA has accepted and authorized AT&T-21STATE to begin construction, any further modifications and/or revisions must be made via a subsequent Collocation Application and the appropriate fees will apply. **This provision shall not apply if AT&T-21STATE requested or required the revision or modification, in which case no additional charges shall apply**.

CA comments:

AT&T's proposed language permits AT&T to provide a quote to CA, have CA approve the quote, then after approval AT&T may require CA to make changes to its application and AT&T would be entitled to charge application fees over and over again for the same application. Since collocation is a UNE and UNEs are intended to be cost-based, CA believes this language is inappropriate. Further, if AT&T intends to require changes to the application those changes should be requested by AT&T prior to providing the quote. If AT&T provides a quote, and CA accepts that quote, then AT&T should not be entitled to later demand changes to the application and again charge a new application fee before it will complete the work that was quoted and accepted by CA. CA has added a provision that ensures that if AT&T requires revisions to an application after CA has accepted AT&T's quote, AT&T is not entitled to charge additional application fees for the application.

Issue #9c: AT&T may not charge CA for collocation application modifications which do not increase AT&T's costs

Third instance appears: Collocation, 7.5.1

AT&T proposed language:

> A request from a Collocator to add or modify space, equipment, and/or cable to an existing Collocation arrangement is considered an Augment. Such a request must be made via a complete and accurate Application.

CA proposed language:

> A request from a Collocator to add or modify space, and/or cable to an existing Collocation arrangement is considered an Augment. Such a request must be made via a complete and accurate Application. **This provision shall not apply and no fee shall be due if Collocator is installing or replacing collocated equipment in its own space, without requesting any action by AT&T even if Collocator submits updated equipment designations to AT&T in accordance with this agreement.**

CA comments:

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 a UNE and UNEs are intended to be cost-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.

Issue #10: AT&T should not charge for collocation until it has been delivered correctly

Appears: Collocation, 10.8.3

AT&T proposed language:

None.

CA proposed language:

If AT&T-21STATE provides inaccurate information to Collocator which results in wasted costs to Collocator (such as the cost of construction of cross-connects to incorrect CFAs), then AT&T-21STATE shall credit to Collocator's account the reasonable, demonstrated costs incurred as a result of the inaccurate information. In addition, AT&T-21STATE shall also credit any charges billed by AT&T-21STATE for use of the collocation and any element(s) of the collocation for the period that it was unusable as a result of the inaccurate information.

CA comments:

AT&T has a well-documented history of providing inaccurate connecting facility assignments ("CFA") when delivering a new collocation to a CA. In some cases, inaccurate CFAs have been provided four times or more on a single collocation. Each time this occurs, CA is denied use of the collocation for a significant period of time, which delays CA's entry into the market. CA also expends resources and capital connecting or attempting to connect its network to the CFAs provided by AT&T. There is no way for the CA to know that AT&T has provided incorrect information until CA has tried unsuccessfully to place orders with AT&T for circuits connecting to those CFAs and they are rejected. By that time, CA has already paid the AT&T AIS to run cables to the incorrect CFAs and has incurred substantial costs. Without this provision, AT&T is able to significantly increase CA's costs due solely to AT&T's "error" without any detriment to AT&T. It therefore seems fair that AT&T should reimburse CA's actual demonstrated costs when such "errors" occur.

Issue #11: CA should be given adequate time to construct network facilities

Appears: Collocation, 14.2

AT&T proposed language:

> If the Collocator has not left the cable in the manhole within one hundred twenty (120) calendar days of the request for entrance fiber, the Collocator's request for entrance fiber will expire and a new Application must be submitted along with applicable fees. The Collocator may request an additional thirty (30) calendar day extension by notifying AT&T-22STATE, no later than fifteen (15) calendar days prior to the end of the one hundred twenty (120) calendar day period mentioned above, of the need of the extension for the Collocator to place cable at the manhole.

CA proposed language:

> If the Collocator has not left the cable in the manhole within **one hundred eighty (180)** calendar days of the request for entrance fiber, the Collocator's request for entrance fiber will expire and a new Application must be submitted along with applicable fees. The Collocator may request an additional **ninety (90)** calendar day extension by notifying AT&T-22STATE, prior to the end of the one hundred eighty (180) calendar day period mentioned above, of the need of the extension for the Collocator to place cable at the manhole.

CA comments:

The Act plainly states that it is intended to encourage competiton, 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.

Issue #12a: CA should be permitted to directly connect to other Central Office Collocators
First Instance Appears: Collocation, 17.1.2

AT&T proposed language:

> The Collocator must utilize an AT&T-21STATE AIS Tier 1 to place the CA to CA connection.

CA proposed language:

> The Collocator must utilize an AT&T-21STATE AIS Tier 1 to place the CA to CA connection, unless the Collocator and the Third Party both have collocations which are within ten (10) feet of each other and the connection can be made without making use of AT&T-21STATE common cable support structure.

CA comments:

CA would incur substantial costs if it were required to utilize a AT&T AIS to install a data cable that runs less than 10 feet to another collocator which is less than 10 feet away from CA's central ffice 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 or given any reason at all for its opposition, 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.

Issue #12b: CA should be permitted to directly connect to other Central Office Collocators
Second Instance Appears: Collocation, 17.1.5

AT&T proposed language:

> The CA to CA connection shall utilize AT&T-21STATE common cable support structure and will be billed for the use of such structure according to rates in the Pricing Schedule.

CA proposed language:

> The CA to CA connection shall utilize AT&T-21STATE common cable support structure and will be billed for the use of such structure according to rates in the Pricing Schedule, **unless the Collocator and the Third Party are both have collocations which are within ten (10) feet of each other and the connection can be made without making use of AT&T-21STATE common cable support structure.**

CA comments:

> See comments to 12a.

Issue #13: AT&T should not be permitted to arbitrarily remove CA collocated equipment

Appears: Collocation, 3.18.4

AT&T proposed language:

> In the event AT&T-21STATE believes that collocated equipment is not necessary for interconnection or access to 251(c)(3) UNEs or that the Collocator's equipment does not meet the minimum safety standards, Collocator will be given ten (10) Business Days to comply with the requirements and/or remove the equipment from the collocation space if the equipment was already collocated. If it is determined that the Collocator's equipment does not meet the minimum safety standards above, the Collocator must not collocate the equipment and will be responsible for removal of the equipment and all resulting damages if the equipment already was collocated improperly.

CA proposed language:

> In the event **it is agreed between the parties or determined following a dispute resolution proceeding initiated by either party** that collocated equipment is not necessary for interconnection or access to 251(c)(3) UNEs or that the Collocator's equipment does not meet the minimum safety standards, Collocator will be given **thirty (30)** Days to comply with the requirements and/or remove the equipment from the collocation space if the equipment was already collocated. If it is determined that the Collocator's equipment does not meet the minimum safety standards **in Section 3.17.2** above, the Collocator must not collocate the equipment and will be responsible for removal of the equipment and all resulting damages if the equipment already was collocated improperly.

CA comments:

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 dispute resolution provisions. CA does not find this arrangement fair or equitable, so CA has instead inserted proposed language to require compliance with dispute resolution. 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.

Issue #14: The due date of a bill should be extended if it is received late by CA

Appears: GTC, 2.41

AT&T proposed language:

> "Bill Due Date" means thirty (30) calendar days from the bill date.

CA proposed language:

> "Bill Due Date" means thirty (30) calendar days from the bill date or 20 days following receipt of a bill by the billed party, whichever is later.

CA comments:

AT&T has a well established history of failure to properly and timely send complete bills to CLECs. 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 dispute and/or remit payment as appropriate. If CA abuses this provision, AT&T would still be able to seek dispute resolution remedies, and AT&T is also able to send bills to CA with delivery confirmation to prove date of receipt. CA notes that many previous interconnection agreements contain CA's language; AT&T has only recently removed it from its agreements.

Issue #15: AT&T should not disconnect service based upon disputed amounts

Appears: GTC, 2.70

AT&T proposed language:

> "Discontinuance Notice" means the written Notice sent by the Billing Party to the other Party that notifies the Non-Paying Party that in order to avoid disruption or disconnection of the Interconnection Services, the Non-Paying Party must remit all Unpaid Charges to the Billing Party within 15 calendar days.

CA proposed language:

> "Discontinuance Notice" means the written Notice sent by the Billing Party to the other Party that notifies the Non-Paying Party that in order to avoid disruption or disconnection of the Interconnection Services furnished under this Agreement, the Non-Paying Party must remit all Unpaid **and Undisputed Charges for service provided under this agreement to the Billing Party within 30 calendar days following receipt of the Billing Party's Notice on Unpaid Charges.**

CA comments:

AT&T has a well-established history of improperly billing CAs, not timely billing CAs for services, and failing to properly and timely process CA billing disputes. For its own convenience, AT&T's language in this case is designed to once again permit AT&T to circumvent the dispute resolution process in the agreement in favor of one-sided, unilateral action by AT&T which likely results in fatal damage to the CLEC instead. AT&T's language would permit it to cause fatal damage to a CLEC even if the issue is caused by AT&T's errors or omissions. CA has modified AT&T's language to clarify that AT&T may only demand payment of undisputed and unpaid charges under threat of disconnection. CA has also clarified that AT&T may not disconnect service under this agreement in response to any alleged unpaid amounts for service not provided under this agreement, and CA has lengthened the cure time from 15 days to 30 days from receipt of notice.

CA has already agreed to AT&T's language requiring a security deposit equal to two months of service, which may be adjusted by AT&T at any time to ensure that the deposit keeps pace with CA's monthly billing. AT&T is not at risk if it timely invokes the dispute resolution process due to CA's failure to pay for services, and is also not at risk under CA's proposed language here because the two month deposit will cover any billing if AT&T timely sends the notices of non-payment. AT&T is able, at any time, to invoke dispute resolution including use of the Commission's new expedited process if it so chooses. This should render moot any concern of long-running bad-faith disputes by CA.

Issue #16a: CA is not in default for non-payment of properly disputed charges
First instance appears: GTC, 2.102

AT&T proposed language:

> "Late Payment Charge" means the charge that is applied when a CA fails to remit payment for any charges by the Bill Due Date, or if payment for any portion of the charges is received from CA after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available or received by AT&T-21STATE as of the Bill Due Date, or if the CA does not submit the Remittance Information.

CA proposed language:

> "Late Payment Charge" means the charge that is applied when a CA fails to remit payment for any **undisputed** charges by the Bill Due Date, or if payment for any portion of the charges is received from CA after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available or received by AT&T-21STATE as of the Bill Due Date.

CA comments:

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.

Issue #16b: CA is not in default for non-payment of properly disputed charges
Second instance appears: GTC, 2.133

AT&T proposed language:

> "Past Due" means when a CLEC fails to remit payment for any charges by the Bill Due Date, or if payment for any portion of the charges is received from CLEC after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available to AT&T-21STATE as of the Bill Due Date (individually and collectively means Past Due).

CA proposed language:

> "Past Due" means when a CLEC fails to remit payment for any **undisputed** charges by the Bill Due Date, or if payment for any portion of the charges is received from CLEC after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available to AT&T-21STATE as of the Bill Due Date (individually and collectively means Past Due).

CA comments:

CA has modified AT&T's language to clarify that only undisputed charges are past due if not timely paid.

Issue #16c: CA is not in default for non-payment of properly disputed charges
Third instance appears: GTC, 2.160

AT&T proposed language:

> "Unpaid Charges" means any charges billed to the Non-Paying Party that the Non-Paying Party did not render full payment to the Billing Party by the Bill Due Date, including where funds were not accessible.

CA proposed language:

> "Unpaid Charges" means any **undisputed** charges billed to the Non-Paying Party that the Non-Paying Party did not render full payment to the Billing Party by the Bill Due Date, including where funds were not accessible.

CA comments:

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

Issue #16d: CA is not in default for non-payment of properly disputed charges
Fourth instance appears: GTC, 11.3.1

AT&T proposed language:

> If any portion of the payment is not received by AT&T-21STATE on or before the payment due date as set forth above, or if any portion of the payment is received by AT&T-21STATE in funds that are not immediately available to AT&T-21STATE, then a late payment and/or interest charge shall be due to AT&T-21STATE. The late payment and/or interest charge shall apply to the portion of the payment not received and shall be assessed as set forth in the applicable state tariff, or, if no applicable state tariff exists, as set forth in the Guide Book as published on the AT&T CA Online website, or pursuant to the applicable state law as determined by AT&T-21STATE. In addition to any applicable late payment and/or interest charges, CLEC may be charged a fee for all returned checks at the rate set forth in the applicable state tariff, or, if no applicable tariff exists, as set forth in the Guide Book or pursuant to the applicable state law.

CA proposed language:

> If any **undisputed** portion of the payment is not received by AT&T-21STATE on or before the payment due date as set forth above, or if any portion of the payment is received by AT&T-21STATE in funds that are not immediately available to AT&T-21STATE, then a late payment and/or interest charge shall be due to AT&T-21STATE. The late payment and/or interest charge shall apply to the portion of the payment neither received nor disputed and shall be assessed as set forth in the applicable state tariff, or, if no applicable state tariff exists, as set forth in the Guide Book as published on the AT&T CA Online website, or pursuant to the applicable state law as determined by AT&T-21STATE. In addition to any applicable late payment and/or interest charges, CLEC may be charged a fee for all returned checks at the rate set forth in the applicable state tariff, or, if no applicable tariff exists, as set forth in the Guide Book or pursuant to the applicable state law.

CA comments:

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

Issue #17a: The Parties each have a right to seek remedy from the Commission for unjust terms

First Instance Appears: GTC, 3.3.1

AT&T proposed language:

> Any reference throughout this Agreement to an industry guideline, AT&T-21STATE's technical guideline or referenced AT&T-21STATE business rule, guide or other such document containing processes or specifications applicable to the services provided pursuant to this Agreement, shall be construed to refer to only those provisions thereof that are applicable to these services, and shall include any successor or replacement versions thereof, all as they are amended from time to time and all of which are incorporated herein by reference, and may be found at AT&T's CLEC Online website.

CA proposed language:

> Any reference throughout this Agreement to an industry guideline, AT&T-21STATE's technical guideline or referenced AT&T-21STATE business rule, guide or other such document containing processes or specifications applicable to the services provided pursuant to this Agreement, shall be construed to refer to only those provisions thereof that are applicable to these services, and shall include any successor or replacement versions thereof, all as they are amended from time to time and all of which are incorporated herein by reference, and may be found at AT&T's CLEC Online website. **This provision shall not be construed as a waiver of either party's rights to dispute the reasonableness, lawfulness and/or enforceability of any provision of any incorporated document before the Commission following a good-faith effort to resolve any dispute informally between the parties.**

CA comments:

CA does not believe that it is appropriate for AT&T to attempt to give itself the ability to unilaterally amend the Agreement by posting a document to its website, while CA is given no such ability nor any input into what AT&T may post to its website. CA must retain the ability to challenge the reasonableness, lawfulness or enforceability of anything that AT&T attempts to incorporate in this manner.

Issue #17b: The Parties each have a right to seek remedy from the Commission for unjust terms

Second Instance Appears: OSS, 3.3

AT&T proposed language:

> AT&T-21STATE will provide all relevant documentation (manuals, user guides, specifications, etc.) regarding business rules and other formatting information, as well as practices and procedures, necessary to handle OSS related requests. All relevant documentation will be readily accessible at AT&T's CLEC Online website. Documentation may be amended by AT&T-21STATE in its sole discretion from time to time. All Parties agree to abide by the procedures contained in the then-current documentation.

CA proposed language:

> AT&T-21STATE will provide all relevant documentation (manuals, user guides, specifications, etc.) regarding business rules and other formatting information, as well as practices and procedures, necessary to handle OSS related requests. All relevant documentation will be readily accessible at AT&T's CLEC Online website. Documentation may be amended by AT&T-21STATE in its sole discretion from time to time. All Parties agree to abide by the procedures contained in the then-current documentation. **This provision shall not be construed as a waiver of either party's rights to dispute the reasonableness, lawfulness and/or enforceability of any provision of any incorporated document before the Commission following a good-faith effort to resolve any dispute informally between the parties.**

CA comments:

> See comments to 17a above.

Issue #18: Agreement should be severable in the event any term or condition is found invalid

Appears: GTC, 3.7.2

AT&T proposed language:

> If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to affect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible. The Parties negotiated the terms and conditions of this Agreement for Interconnection Services as a total arrangement and it is intended to be non-severable.

CA proposed language:

> If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to affect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

CA comments:

CA has simply stricken the last sentence of AT&T's proposed language. CA believes there is no reason for the entire negotiated agreement to be non-severable. AT&T has an anti-competitive motive for the agreement to be terminated, and obviously benefits if that occurs. CA has expended tremendous resources to negotiate the Draft agreement and its business may not survive termination of the agreement. If any provision is held by the Commission or by a court to be invalid or unenforceable, CA's proposed language already compels the parties to negotiate replacement language in good faith. That provision seems to conflict with AT&T's added language which would instead terminate the entire agreement if any provision were invalidated. CA's language (itself entirely proposed by AT&T) should be adequate remedy, without dismantling the entire agreement.

Issue #19a: Only the parties to this agreement may be bound by this agreement
First Instance Appears: GTC, 3.12.1

AT&T proposed language:

> This Agreement, including subsequent amendments, if any, shall bind AT&T-21STATE, CLEC and any entity that currently or subsequently is owned or controlled by or under common ownership or control with CLEC. CLEC further agrees that the same or substantially the same terms and conditions shall be incorporated into any separate agreement between AT&T-21STATE and any such CLEC affiliate that continues to operate as a separate entity. This Agreement shall remain effective as to CLEC and any such CLEC Affiliate for the term of this Agreement as stated herein, (subject to any early termination due to default), until either AT&T-21STATE or CLEC or any such CLEC Affiliate institutes renegotiation consistent with the provisions of this Agreement for renewal and term. Notwithstanding the foregoing, this Agreement will not supersede a currently effective interconnection agreement between any such CLEC Affiliate and AT&T-21STATE until the expiration of such other agreement.

CA proposed language:

> This Agreement, including subsequent amendments, if any, shall bind AT&T-21STATE, CLEC and **all successors of the parties.** This Agreement shall remain effective as to CLEC and any such CLEC **successors** for the term of this Agreement as stated herein, (subject to any early termination due to default), until either AT&T-21STATE or CLEC or any such **successor to either party** institutes renegotiation consistent with the provisions of this Agreement for renewal and term. Notwithstanding the foregoing, this Agreement will not supersede a currently effective interconnection agreement between any such CLEC **successor** and **AT&T-21STATE unless agreed in writing by the parties.**

CA comments:

AT&T's language proposes to bind non-parties to this agreement, which is not legally permissible. CA language clarifies that this agreement only binds and benefits the parties executing this agreement and their respective successors, and no other parties whom AT&T may allege are affiliated but which are not parties to this agreement. CA notes that AT&T has not proposed that its own affiliates, including various AT&T companies like AT&T Wireless and AT&T U-Verse, should be bound by this agreement.

Issue #19b: Only the parties to this agreement may be bound by this agreement
Second Instance Appears: GTC, 32.1

AT&T proposed language:

> This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any Third Party beneficiary rights hereunder. This Agreement shall not provide any Person not a Party hereto with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.

CA proposed language:

> This Agreement is for the sole benefit of the Parties and their permitted assigns or successors, and nothing herein expressed or implied shall create or be construed to create any Third Party beneficiary rights **or obligations** hereunder. This Agreement shall not provide any Person not a Party hereto with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.

CA comments:

CA language clarifies that this agreement only binds and benefits the parties executing this agreement and their respective successors and assigns, and no other parties which are not parties to this agreement.

Issue #20a: Each party must bear its own costs for network interconnection
First Instance Appears: GTC, 5.1

AT&T proposed language:

> Each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with AT&T-21STATE's network as referenced in Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275, and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

CA proposed language:

> Each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with AT&T-21STATE's network as referenced in Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275, and to terminate the traffic it receives in that standard format to the proper address on its network. **Each party shall bear all costs of local interconnection facilities on its side of the Point of Interconnection ("POI"), and neither party shall charge the other party non-recurring or monthly recurring charges associated with local interconnection services or components located at the POI or on the billing party's side of the POI.** The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

CA comments:

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.

Issue #20b: Each party must bear its own costs for network interconnection

Second Instance Appears: ICC, 4.6.4

AT&T proposed language:

> The Parties will process trunk service requests submitted via a properly completed ASR within ten (10) business days of receipt of such ASR unless defined as a major project. Incoming orders will be screened by AT&T-21STATE for reasonableness based upon current utilization and/or consistency with forecasts. If the nature and necessity of an order requires determination, the ASR will be placed in held status and a joint planning discussion conducted. The Parties agree to expedite this discussion in order to minimize delay in order processing. Extension of this review and discussion process beyond two (2) Business Days from ASR receipt may require the ordering Party to supplement the order with proportionally adjusted Customer Desired Due Dates. Facilities must also be in place before trunk orders can be completed.

CA proposed language:

> The Parties will process trunk service requests submitted via a properly completed ASR within ten (10) business days of receipt of such ASR unless defined as a major project. Incoming orders will be screened by AT&T-21STATE for reasonableness based upon current utilization and/or consistency with forecasts. If the nature and necessity of an order requires determination, the ASR will be placed in held status and a joint planning discussion conducted. The Parties agree to expedite this discussion in order to minimize delay in order processing. Extension of this review and discussion process beyond two (2) Business Days from ASR receipt may require the ordering Party to supplement the order with proportionally adjusted Customer Desired Due Dates. Facilities must also be in place before trunk orders can be completed. **Neither party shall charge the other for ASRs related to ordering, rearranging or disconnecting Local Interconnection trunks, including charges for due date changes and ordering intervals.**

CA comments:

> See comments to 20a.

Issue #21a: CA need not obtain insurance to insure services it has not ordered or used
First instance appears: GTC, 6.1.1.4

AT&T proposed language:

> With respect to CLEC's performance under this Agreement, and in addition to CLEC's obligation to indemnify, CLEC shall at its sole cost and expense maintain the insurance coverage and limits required by this Section 6.0 and any additional insurance and/or bonds required by law at all times during the term of this Agreement and until completion of all work associated with this Agreement is completed, whichever is later; and with respect to any coverage maintained in a "claims-made" policy, for two (2) years following the term of this Agreement or completion of all Work associated with this Agreement, whichever is later and if a "claims-made" policy is maintained, the retroactive date must precede the commencement of Work under this Agreement; and require each subcontractor who may perform work under this Agreement or enter upon the work site to maintain coverage, requirements, and limits at least as broad as those listed in this Section 6.0 from the time when the subcontractor begins work, throughout the term of the subcontractor's work and, with respect to any coverage or extended discovery period maintained on a "claims-made" policy, for two (2) years thereafter; and procure the required insurance from an insurance company eligible to do business in the state or states where work will be performed and having and maintaining a Financial Strength Rating of "A-" or better and a Financial Size Category of "VII" or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies, except that, in the case of Workers' Compensation insurance, CLEC may procure insurance from the state fund of the state where work is to be performed; and deliver to AT&T-21STATE certificates of insurance stating the types of insurance and policy limits. CLEC shall provide or will endeavor to have the issuing insurance company provide at least thirty (30) days advance written notice of cancellation, non-renewal, or reduction in coverage, terms, or limits to AT&T-21STATE. CLEC shall deliver such certificates prior to execution of this agreement and prior to commencement of any Work; and prior to expiration of any insurance policy required in this Section 6.0; and for any coverage maintained on a "claims-made" policy, for two (2) years following the term of this Agreement or completion of all Work associated with this Agreement, whichever is later.

CA proposed language:

> With respect to CLEC's performance under this Agreement, and in addition to CLEC's obligation to indemnify, CLEC shall at its sole cost and expense maintain the insurance coverage and limits required by this Section 6.0 and any additional insurance and/or bonds required by law at all times during the term of this Agreement and until completion of all work associated with this Agreement is completed, whichever is later; and with respect to any coverage maintained in a "claims-made" policy, for two (2) years following the term of this Agreement or completion of all Work associated with this Agreement, whichever is later and if a "claims-made" policy is maintained, the retroactive date must precede the commencement of Work under this Agreement; and require each subcontractor who may perform work under this Agreement or enter upon the work site to maintain coverage, requirements, and limits at least as broad as those listed in this Section 6.0 from the time when the subcontractor begins work, throughout the term of the subcontractor's work and,

with respect to any coverage or extended discovery period maintained on a "claims-made" policy, for two (2) years thereafter; and procure the required insurance from an insurance company eligible to do business in the state or states where work will be performed and having and maintaining a Financial Strength Rating of "A-" or better and a Financial Size Category of "VII" or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies, except that, in the case of Workers' Compensation insurance, CLEC may procure insurance from the state fund of the state where work is to be performed; and deliver to AT&T-21STATE certificates of insurance stating the types of insurance and policy limits. CA shall provide or will endeavor to have the issuing insurance company provide at least thirty (30) days advance written notice of cancellation, non-renewal, or reduction in coverage, terms, or limits to AT&T-21STATE. CA shall deliver such certificates prior to commencement of any Work which requires specific insurance coverage under this agreement; and prior to expiration of any insurance policy required in this Section 6.0; and for any coverage maintained on a "claims-made" policy, for two (2) years following the term of this Agreement or completion of all Work associated with this Agreement, whichever is later.

CA comments:

CA should not be required to obtain insurance for service or work that it is not engaged in.

Issue #21b: CA need not obtain insurance to insure services it has not ordered or used
Second instance appears: GTC, 6.2.2.11 – 6.2.2.13

AT&T proposed language:

> CA shall also provide a copy of the Additional Insured endorsement to AT&T-21STATE. The Additional Insured endorsement may either be specific to AT&T-21STATE or may be "blanket" or "automatic" addressing any person or entity as required by contract. A copy of the Additional Insured endorsement must be provided within sixty (60) calendar days of execution of this Agreement and within sixty (60) calendar days of each Commercial General Liability policy renewal; include a waiver of subrogation in favor of AT&T-21STATE, its Affiliates, and their directors, officers and employees; and be primary and non-contributory with respect to any insurance or self-insurance that is maintained by AT&T-21STATE; and not exclude explosion, Collapse, and Underground Damage Liability must not be excluded from the Commercial General Liability policy for any Work involving explosives or any underground Work and Explosion, Collapse, and Underground Damage Liability will have the same limit requirement as the Commercial General Liability policy;and

CA proposed language:

> CA shall also provide a copy of the Additional Insured endorsement to AT&T-21STATE. The Additional Insured endorsement may either be specific to AT&T-21STATE or may be "blanket" or "automatic" addressing any person or entity as required by contract. A copy of the Additional Insured endorsement must be provided **prior to the placement of any orders for collocation, pole attachment or any other Unbundled Network Elements** and within sixty (60) calendar days of each Commercial General Liability policy renewal; include a waiver of subrogation in favor of AT&T-21STATE, its Affiliates, and their directors, officers and employees; and be primary and non-contributory with respect to any insurance or self-insurance that is maintained by AT&T-21STATE; and not exclude explosion, Collapse, and Underground Damage Liability must not be excluded from the Commercial General Liability policy for any Work involving explosives or any underground Work and Explosion, Collapse, and Underground Damage Liability will have the same limit requirement as the Commercial General Liability policy **(if CA will engage in such work);** and

CA comments:

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.

Issue #22: CA insurance requirements should reflect the size of CA's operations

Appears: GTC, 6.2.1

AT&T proposed language:

The insurance coverage required by this Section 6.0 includes:

Workers' Compensation insurance with benefits afforded under the laws of any state in which the work is to be performed and Employers Liability insurance with limits of at least:

$1,000,000 for Bodily Injury – each accident; and

$1,000,000 for Bodily Injury by disease – policy limits; and

$1,000,000 for Bodily Injury by disease – each employee.

To the fullest extent allowable by Law, the policy must include a waiver of subrogation in favor of AT&T-21STATE, its affiliates, and their directors, officers and employees and,

In states where Workers' Compensation insurance is a monopolistic state-run system, CA shall add Stop Gap Employers Liability with limits not less than $1,000,000 each accident or disease; and,

To the extent that any Work is subject to the Jones Act, the Longshore and Harbor Workers' Compensation Act, Federal Employers Liability Act, Continental Shelf, or the Defense Base Act, the Workers' Compensation policy must be endorsed to cover such liability under such Act.

CA proposed language:

The insurance coverage required by this Section 6.0 includes:

Workers' Compensation insurance with benefits afforded under the laws of any state in which the work is to be performed and Employers Liability insurance with limits of at least:

$100,000 for Bodily Injury – each accident; and

$500,000 for Bodily Injury by disease – policy limits; and

$100,000 for Bodily Injury by disease – each employee.

To the extent that any Work is subject to the Jones Act, the Longshore and Harbor Workers' Compensation Act, Federal Employers Liability Act, Continental Shelf, or the Defense Base Act, the Workers' Compensation policy must be endorsed to cover such liability under such Act.

CA comments:

CA believes that its proposed policy limits are adequate to protects CA and its employees, and notes that CA's limits comply with all legal and regulatory requirements. AT&T

has not shown that CA's proposed limits cause harm or risk to AT&T. CA has stricken the waiver of subrogation clause because it would serve to indemnify AT&T for damage that AT&T causes, which CA does not believe is reasonable. Both of the foregoing would unreasonably cause higher costs and/or an inability to obtain coverage for CA. CA has also stricken the Stop Gap provision as not applicable in Florida because Florida does not operate a state-run Workers' Compensation system.

Issue #23: CA should not be required to purchase fire damage insurance if not collocating

Appears: GTC, 6.2.2.

AT&T proposed language:

> Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing equivalent coverage, covering liability arising from premises, operations, personal injury, products/completed operations, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with limits of at least:
>
> **Non-Collocating**
>
> $2,000,000 General Aggregate; and
>
> $1,000,000 Each Occurrence; and
>
> $1,000,000 Personal Injury and Advertising Injury; and
>
> $2,000,000 Products/Completed Operations Aggregate; and
>
> $1,000,000 Damage to Premises Rented to You (Fire Legal Liability)

CA proposed language:

> Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing equivalent coverage, covering liability arising from premises, operations, personal injury, products/completed operations, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with limits of at least:
>
> **Non-Collocating**
>
> $2,000,000 General Aggregate; and
>
> $1,000,000 Each Occurrence; and
>
> $1,000,000 Personal Injury and Advertising Injury; and
>
> $2,000,000 Products/Completed Operations Aggregate; and

CA comments:

CA raised this issue with AT&T and received no response. This section specifically applies to **non-collocators only**, so there is no reason that CA should be required to carry the fire damage coverage if it is not collocating and has no access to AT&T's premises. CA does not object to the requirement to carry such insurance if it is collocating, which is specified in the following section (6.2.2.6 to 6.2.2.10). AT&T's language seems solely intended to artificially raise CA's operational costs, which is anti-competitive. AT&T did not respond to CA on this issue in negotiations.

Issue #24: CA General Liability Limits should be reasonable when collocating

Appears: GTC, 6.2.2

AT&T proposed language:

> Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing equivalent coverage, covering liability arising from premises, operations, personal injury, products/completed operations, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with limits of at least:
>
> Collocating
>
> $10,000,000 General Aggregate; and
>
> $5,000,000 Each Occurrence; and
>
> $5,000,000 Personal Injury and Advertising Injury; and
>
> $10,000,000 Products/Completed Operations Aggregate; and
>
> $2,000,000 Damage to Premises Rented to You (Fire Legal Liability)

CA proposed language:

> Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing equivalent coverage, covering liability arising from premises, operations, personal injury, products/completed operations, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with limits of at least:
>
> **Collocating**
>
> **$2,000,000** General Aggregate; and
>
> **$2,000,000** Each Occurrence; and
>
> **$2,000,000** Personal Injury and Advertising Injury; and
>
> **$2,000,000** Products/Completed Operations Aggregate; and
>
> **$500,000** Damage to Premises Rented to You (Fire Legal Liability)

CA comments:

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 reasonably incurs risk greater than CA's proposed limits. 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.

Issue #25: AT&T should not unreasonably prevent the acquisition or sale of CA

Appears: GTC, 7.1.1

AT&T proposed language:

> CA may not assign, delegate, or otherwise transfer its rights or obligations under this Agreement, voluntarily or involuntarily, directly or indirectly, whether by merger, consolidation, dissolution, operation of law, Change in Control or any other manner, without the prior written consent of AT&T-21STATE. For any proposed assignment or transfer CA shall provide AT&T-21STATE with a minimum of one hundred twenty (120) calendar days advance written Notice of any assignment associated with a CA Company Code (ACNA/CIC/OCN) change or transfer of ownership of assets and request AT&T-21STATE's written consent. CA's written Notice shall include the anticipated effective date of the assignment or transfer. Any attempted assignment or transfer that is not permitted is void as to AT&T-21STATE and need not be recognized by AT&T-21STATE unless it consents or otherwise chooses to do so for a more limited purpose. CA may assign or transfer this Agreement and all rights and obligations hereunder, whether by operation of law or otherwise, to an Affiliate by providing sixty (60) calendar days advance written Notice of such assignment to AT&T-21STATE; provided that such assignment or transfer is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain and maintain proper Commission certification and approvals) or the terms and conditions of this Agreement. Notwithstanding the foregoing, CA may not assign or transfer this Agreement, or any rights or obligations hereunder, to an Affiliate if that Affiliate is a Party to a separate interconnection agreement with AT&T-21STATE under Sections 251 and 252 of the Act that covers the same state(s) as this Agreement. Any attempted assignment or transfer that is not permitted is void *ab initio*

CA proposed language:

> CA may not assign, delegate, or otherwise transfer its rights or obligations under this Agreement, voluntarily or involuntarily, directly or indirectly, whether by merger, consolidation, dissolution, operation of law, Change in Control or any other manner, without the prior written consent of AT&T-21STATE, **which shall not be unreasonably withheld**. For any proposed assignment or transfer CA shall provide AT&T-21STATE with a minimum of **sixty (60)** calendar days advance written Notice of any assignment associated with a CA Company Code (ACNA/CIC/OCN) change or transfer of ownership of assets and request AT&T-21STATE's written consent. CA's written Notice shall include the anticipated effective date of the assignment or transfer. CA may assign or transfer this Agreement and all rights and obligations hereunder, whether by operation of law or otherwise, to an Affiliate by providing sixty (60) calendar days advance written Notice of such assignment to AT&T-21STATE; provided that such assignment or transfer is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain and maintain proper Commission certification and approvals) or the terms and conditions of this Agreement.

CA comments:

CA has added a provision requiring that AT&T may not unreasonably withhold consent, and has also deleted two sentences which would give AT&T unreasonable ability to prevent the sale or acquisition of CA or its assets. CA has revised the required notice of acquisition from 120 days to 60 days, and AT&T has not shown why 60 days would be inadequate.

Issue #26: CA should be entitled to a five year term of this agreement

Appears: GTC, 8.2.1

AT&T proposed language:

> Unless terminated for breach (including nonpayment), the term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on <<txtExpDate>> (the "Initial Term").

CA proposed language:

> Unless terminated for breach (including nonpayment), the term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire **five years from the Effective Date** (the "Initial Term").

CA comments:

CA is a small company with limited resources, has expended tremendous resources to negotiate this Draft, 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 two year term, which is what AT&T 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. 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 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 anti-competitive. AT&T currently maintains dozens of ICAs for CLECs that have been in evergreen status for almost a decade. These are routinely amended to reflect changes in law.

Issue #27: AT&T may not terminate Agreement for disputed breach by CA

Appears: GTC, 8.3.1

AT&T proposed language:

> Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection Services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written Notice thereof. If the nonperforming Party fails to cure such nonperformance or breach within the forty-five (45) calendar day period provided for within the original Notice, then the terminating Party will provide a subsequent written Notice of the termination of this Agreement and such termination shall take effect immediately upon delivery of written Notice to the other Party.

CA proposed language:

> Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection Services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written Notice thereof. If the nonperforming Party fails to cure such nonperformance or breach within the forty-five (45) calendar day period provided for within the original Notice, then the terminating Party will provide a subsequent written Notice of the termination of this Agreement and such termination shall take effect immediately upon delivery of written Notice to the other Party. **Neither party shall terminate this Agreement or service under this provision if the alleged breach is disputed and the Dispute Resolution process has been invoked but not concluded, including all appeals.**

CA comments:

Although AT&T's language throughout this Draft 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 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.

Issue #28: AT&T may not refuse to negotiate a successor agreement based solely upon CA's failure to pay disputed charges

Appears: GTC, 8.4.6

AT&T proposed language:

> AT&T may reject a request under Section 252 to initiate negotiations for a new agreement if CA has an outstanding balance under this Agreement. CA may send a subsequent notice under Section 252 when the outstanding balance has been paid in full.

CA proposed language:

> AT&T may reject a request under Section 252 to initiate negotiations for a new agreement if CA has an **undisputed** outstanding balance under this Agreement. CA may send a subsequent notice under Section 252 when the outstanding balance has been paid in full.

CA comments:

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.

Issue #29: AT&T should not draw upon CA's deposit/LOC without cause

Appears: GTC, 10.8.3

AT&T proposed language:

> AT&T-21STATE may, but is not obligated to, draw on the Letter of Credit or the Cash Deposit, as applicable, upon the occurrence of any one of the following events:
>
> > CA owes AT&T-21STATE undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or
> >
> > CA admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding; or,
> >
> > The expiration or termination of this Agreement

CA proposed language:

> AT&T-21STATE may, but is not obligated to, draw on the Letter of Credit or the Cash Deposit, as applicable, upon the occurrence of any one of the following events:
>
> > CA owes AT&T-21STATE undisputed charges under this Agreement that are more than thirty (30) calendar days past due; or
> >
> > CA admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had an involuntary case commenced against it) under the U.S. Bankruptcy Code or any other law relating to insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.

CA comments:

CA believes that AT&T's right to draw upon the deposit or letter of credit based upon unpaid/undisputed charges or in the case of CA's insolvency is adequate to protect AT&T's interests, and that the expiration of the Agreement should not be a condition for such an action. Nothing in the Agreement requires AT&T to refund a deposit upon expiration of the Agreement, which will most likely be replaced with a successor agreement under which any deposit would likely continue to be held by AT&T. AT&T's language would permit it to take the deposit upon every Agreement expiration and/or renewal and to bypass the normal dispute resolution process between the parties to resolve disputed charges. CA believes that striking "expiration or termination of this Agreement" as a trigger to taking CA's deposit is appropriate.

Issue #30: CA should not incur Late Payment Charges because of AT&T posting delays

Appears: GTC, 11.8

AT&T proposed language:

> Processing of payments not made via electronic funds credit transfers through the ACH network may be delayed. CA is responsible for any Late Payment Charges resulting from CA's failure to use electronic funds credit transfers through the ACH network.

CA proposed language:

> None. Delete.

CA comments:

CA seeks to strike this paragraph entirely, because is seems to impose late payment charges upon CA if CA makes timely payments to AT&T in a manner other than ACH, and AT&T does not timely post those payments after receipt. This would constitute a penalty upon CA if CA chose not to process payment via ACH, even if CA made payment on time.

Issue #31a: If CA provides complete information, it should not have to use AT&T's special disputes form

First instance appears: GTC, 11.9

AT&T proposed language:

> 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. The Disputing Party should utilize the preferred form or method provided by the Billing Party to communicate disputes to the Billing Party.

CA proposed language:

> 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.

CA comments:

AT&T has a well-established history of inaccurate CLEC billing and failure to timely resolve disputes in good faith. 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. This manual process also unnecessarily increases the likelihood of errors not present with the automated system. 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.

Issue #31b: If CA provides complete information, it should not have to use AT&T's special disputes form

Second instance appears: GTC, 13.4

AT&T proposed language:

> Service Center Dispute Resolution - the following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement. Written Notice sent to AT&T-21STATE for Disputed Amounts must be made on the "Billing Claims Dispute Form"

CA proposed language:

> Service Center Dispute Resolution - the following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement.

CA comments:

> See comments for Issue 30 above.

Issue #32a: CA should not be required to pay disputed charges into escrow
First instance appears: GTC, 11.9 – 11.12

AT&T proposed language:

On or before the Bill Due Date, the Non-Paying Party must pay: (i) all undisputed amounts to the Billing Party. and (ii) all Disputed Amounts, except for Disputed Amounts arising from compensation for the termination of Section 251(b)(5) Traffic or ISP-Bound Traffic, into an interest bearing escrow account with a Third Party escrow agent that is mutually agreed upon by the Parties.

Requirements to Establish Escrow Accounts:

To be acceptable, the Third Party escrow agent must meet all of the following criteria:

The financial institution proposed as the Third Party escrow agent must be located within the continental United States;

The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and

The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH credit transfers.

In addition to the foregoing requirements for the Third Party escrow agent, the Disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:

The escrow account must be an interest bearing account;

all charges associated with opening and maintaining the escrow account will be borne by the Disputing Party;

that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;

all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and

disbursements from the escrow account will be limited to those:

authorized in writing by both the Disputing Party and the Billing Party (that is, signature(s) from representative(s) of the Disputing Party only are not sufficient to properly authorize any disbursement); or

made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 13.7 below; or

made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 13.7 below.

Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 11.3 above. Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 13.0 below. If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed: the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute. Within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party will be released to the Non-Paying Party, together with any interest accrued thereon; within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party will be released to the Billing Party, together with any interest accrued thereon; and no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 11.9 above.

CA proposed language:

… On or before the Bill Due Date, the Non-Paying Party must pay: (i) all undisputed amounts to the Billing Party. If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed:

the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute.

CA comments:

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 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, including use the Commission's expedited dispute resolution process if it chooses, limiting its exposure and obtaining finality on any disputes.

Issue #32b: CA should not be required to pay disputed charges into escrow
Second instance appears: GTC, 12.4

AT&T proposed language:

> If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than fifteen (15) calendar days following receipt of the Billing Party's notice of Unpaid Charges:
>
> notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total Disputed Amounts and the specific details listed in Section 13.4 below of this Agreement, together with the reasons for its dispute; and
>
> pay all undisputed Unpaid Charges to the Billing Party; and
>
> pay all Disputed Amounts (other than Disputed Amounts arising from Intercarrier Compensation) into an interest bearing escrow account that complies with the requirements set forth in Section 11.10 above; and furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 11.10 above and deposited a sum equal to the Disputed Amounts into that account (other than Disputed Amounts arising from Intercarrier Compensation). Until evidence that the full amount of the Disputed Charges (other than Disputed Amounts arising from Intercarrier Compensation) has been deposited into an escrow account that complies with Section 11.10 above is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 13.0 below.

CA proposed language:

> If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than fifteen (15) calendar days following receipt of the Billing Party's notice of Unpaid Charges:
>
> notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total Disputed Amounts and the specific details listed in Section 13.4 below of this Agreement, together with the reasons for its dispute; and
>
> pay all undisputed Unpaid Charges to the Billing Party.

CA Comments:

See comment above for 32b. CA has stricken the two paragraphs which require payment of disputed amounts into escrow.

Issue #32c: CA should not be required to pay disputed charges into escrow
Third instance appears: GTC, 12.6

AT&T proposed language:

If the Non-Paying Party fails to:

pay any undisputed Unpaid Charges in response to the Billing Party's Discontinuance Notice as described in Section 12.2 above;

deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 11.10 above within the time specified in Section 12.2 above;

timely furnish any assurance of payment requested in accordance with Section 10.4 above; or

make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in 12.6.1 above through 12.6.4 within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options:

suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection under this Agreement;

and/or suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection Service under this Agreement.

CA proposed language:

If the Non-Paying Party fails to:

pay any undisputed Unpaid Charges in response to the Billing Party's Discontinuance Notice as described in Section 12.2 above;

timely furnish any assurance of payment requested in accordance with Section 10.4 above; or

make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in 12.6.1 above through 12.6.4 within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options:

suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection under this Agreement;

and/or suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection Service under this Agreement.

CA Comments:

See comment to 32a above. CA has stricken the paragraph which requires payment of disputed amounts into escrow.

Issue #33: AT&T should not be permitted to disconnect CA service for non-payment of disputed amounts without following the Dispute Resolution provisions

Appears: GTC, 12.2

AT&T proposed language:

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

CA proposed language:

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

CA comments:

Once again, 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.

Issue #34: AT&T should provide CA's dispute ID number when crediting CA disputes

Appears: GTC, 11.9.1

AT&T proposed language:

> the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute.

CA proposed language:

> the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute. **The Billing Party shall identify each specific adjustment or credit with the dispute reference number provided by the Billed Party in its dispute of the charges being credited;**

CA comments:

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. AT&T never responded to CA on this issue in negotiations.

Issue #35a: Eliminate agreement language that does not apply to Florida
First Instance Appears: GTC, 12.9-12.15

AT&T proposed language:

For AT&T MIDWEST REGION 5-STATE only, if the Non-Paying Party fails to pay the Billing Party or properly dispute the unpaid charges on or before the date specified in the demand provided under Section 12.6 above of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, and only if there is no pending litigation or regulatory proceeding in which the Non-Paying Party has disputed its obligation to pay the amounts sought:

cancel any pending application, request or order for new or additional Interconnection Services, under this Agreement; and

disconnect any Interconnection Services furnished under this Agreement;

discontinue providing any Interconnection Services furnished under this Agreement.

Notwithstanding any inconsistent provisions in this Agreement, discontinuance of service by:

AT&T INDIANA will comply with Indiana Utility Regulatory Commission rule 170 IAC 7-6,

On the same date that Resale Services to CA are disconnected, AT&T-7STATE may, but shall not be required to, start to provide service to the CA's Resale End Users for a limited transition period. To the extent feasible, these Resale End Users will receive the same services that were provided through CA immediately prior to the time of transfer; provided, however, AT&T-7STATE reserves the right to toll restrict (both interLATA and intraLATA) such transferred End Users.

Notwithstanding any inconsistent provisions in this Agreement, the provision of services of Resale End Users in AT&T MISSOURI will comply with Missouri Public Service Commission Rule 4 CSR 240-32.120.

Notwithstanding any inconsistent provisions in this Agreement, discontinuance of service by AT&T KANSAS will comply with Kansas Corporation Commission Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

AT&T-7STATE will inform the Commission of the names of all Resale End Users affected by this process.

The Billing Party has no liability to the Non-Paying Party or its End Users in the event of disconnection of service in compliance with Section 12.17 below thru Section 12.18.1 below AT&T-7STATE has no liability to CA or CA's End Users in the event of disconnection of service to CA and the provision of service for a limited transition period for any Resale End Users by AT&T-7STATE in connection with such disconnection, other than AT&T-7STATE's obligations under this agreement, applicable laws and regulations.

Within five (5) calendar days following the disconnection, AT&T-7STATE will notify each Resale End User that because of CA's failure to pay AT&T-7STATE, the End User's local service is now being provided by AT&T-7STATE. This notification will also advise each

Resale End User that the End User has thirty (30) calendar days from the date of transfer to select a new LSP.

Any Resale End User who chooses to accept AT&T-7STATE's service after notice shall be responsible for any and all charges incurred thereafter.If any Resale End User provided service by AT&T-7STATE under Section12.18 below of this Agreement fails to select a new LSP within thirty (30) calendar days of the transfer AT&T-7STATE, may terminate the Resale End User's service.

Nothing in this Agreement shall be interpreted to obligate to AT&T-7STATE continue to provide local service to any Resale End User beyond the thirty (30) calendar day selection period. Nothing herein shall be interpreted to limit any and all disconnection rights AT&T-7STATE has with regard to such transferred Resale End Users under Applicable Law; provided, however,

In AT&T CALIFORNIA only, following expiration of the selection period and disconnection of such Resale End Users, where facilities permit, AT&T CALIFORNIA will furnish the disconnected local residential End Users with "quick dial tone".

CA proposed language:

None. Delete.

CA comments:

This language is clearly not applicable to Florida and should be stricken from the agreement for the avoidance of doubt. AT&T has confirmed that the language does not apply to Florida but has not shown any reason why it should be included.

Issue #35b: Eliminate agreement language that does not apply to Florida
Second Instance Appears: ICC, 4.3.2

AT&T proposed language:

Local Only and Local Interconnection Trunk Group(s) in each Local Exchange Area: AT&T SOUTHWEST REGION 5-STATE. These trunk groups will utilize SS7 where available and multi-frequency (MF) signaling protocol where SS7 is not available. A two-way Local Only Trunk Group shall be established between CLEC's switch and each AT&T SOUTHWEST REGION 5-STATE Local Only Tandem Switch in the local Exchange Area. Inter-Tandem switching is not provided. A two-way Local Interconnection Trunk Group shall be established between CLEC's switch and each AT&T SOUTHWEST REGION 5-STATE Local/IntraLATA Tandem Switch and each Local/Access Tandem Switch in the local Exchange Area. Inter-Tandem switching is not providedAT&T SOUTHWEST REGION 5-STATE reserves the right to initiate a one-way IntraLATA Trunk Group to CLEC in order to provide Tandem relief when a community of interest is outside the local Exchange Area in which CLEC is interconnected.

Where traffic from CLEC switch to an AT&T SOUTHWEST REGION 5-STATE End Office is sufficient (24 or more trunks), a Local Interconnection Trunk Group shall also be established to the AT&T SOUTHWEST REGION 5-STATE End Office. Once such trunks are provisioned, traffic from CA to AT&T SOUTHWEST REGION 5-STATE must be redirected to route first to the Direct End Office Trunk Group (DEOT) with overflow traffic alternate routed to the appropriate AT&T SOUTHWEST REGION 5-STATE Tandem that switches Section 251(b)(5)/IntraLATA Toll Traffic. If an AT&T SOUTHWEST REGION 5-STATE End Office does not subtend an AT&T SOUTHWEST REGION 5-STATE Tandem that switches Section 251(b)(5)/IntraLATA Toll Traffic, a direct final DEOT will be established by CLEC and there will be no overflow of Section 251(b)(5)/IntraLATA Toll Traffic. A Local Interconnection Trunk Group shall be established from CLEC's switch to each AT&T SOUTHWEST REGION 5-STATE End Office in a local Exchange Area that has no Local Tandem. This trunk group shall be established as a direct final. When AT&T SOUTHWEST REGION 5-STATE has a separate Local Only Tandem Switch(es) in the local Exchange Area and a separate Access Tandem Switch that serves the same local Exchange Area, a two-way IntraLATA Toll Trunk Group shall be established to the AT&T SOUTHWEST REGION 5-STATE Access Tandem Switch. In addition a two-way Local Only Trunk Group(s) shall be established from CLEC's switch to each AT&T SOUTHWEST REGION 5-STATE Local Only Tandem Switch.

Each Party shall deliver to the other Party over the Local Only Trunk Group(s) only such traffic that originates and terminates in the same local exchange area.

CA proposed language:

None. Delete.

CA comments: See comments to 35a above.

Issue #35c: Strike agreement language that does not apply to Florida
Third Instance Appears: ICC, 4.3.3

AT&T proposed language: Local Only and/or Local Interconnection Trunk Group(s) in each LATA: AT&T MIDWEST REGION 5-STATE, AT&T SOUTHEAST REGION 9-STATE, and AT&T WEST REGION 2-STATE:

Tandem Trunking - AT&T MIDWEST REGION 5-STATE and AT&T WEST REGION 2-STATE:

Section 251(b)(5) and ISP Bound Traffic shall be routed on Local Only Trunk Groups established at all AT&T MIDWEST REGION 5-STATE and AT&T WEST REGION 2-STATE Local Only Tandems in the LATA for calls destined to or from all AT&T MIDWEST REGION 5-STATE End Offices that subtend the designated Tandem. These trunk groups shall be two-way and will utilize SS7 signaling.

In AT&T MIDWEST REGION 5-STATE and AT&T WEST REGION 2-STATE all Section 251(b)(5)/IntraLATA Toll Traffic shall be routed on two-way Local Interconnection Trunk Groups using SS7 signaling. These trunk groups shall be established at all Local/IntraLATA and Local/Access Tandem switches in AT&T MIDWEST REGION 5-STATE and at the Access Tandem Switches in AT&T WEST REGION 2-STATE in the LATA, for calls destined to or from End Offices that subtend each Tandem.A Local Interconnection Trunk Group shall be established from CLEC's switch to each AT&T MIDWEST REGION 5-STATE and each AT&T WEST REGION 2-STATE End Office in any LATA where the AT&T MIDWEST REGION 5-STATE and AT&T WEST REGION 2-STATE End Office does not subtend an AT&T MIDWEST REGION 5-STATE and AT&T WEST REGION 2-STATE Local Tandem. This trunk group shall be established as a direct final.

Tandem Trunking - AT&T SOUTHEAST REGION 9-STATE:

Section 251(b)(5)/IntraLATA Toll Traffic shall be routed on Local Interconnection Trunk Groups established at each AT&T SOUTHEAST REGION 9-STATE Access Tandem in the LATA where CLEC homes its NPA/NXX codes for calls destined to or from all AT&T SOUTHEAST REGION 9-STATE End Offices that subtend the designated Tandem. These trunk groups shall be two-way and will utilize SS7 signaling. Where CLEC does not interconnect at every Access Tandem switch location in the LATA, CLEC must use Multiple Tandem Access (MTA) to route traffic to End Users through those Tandems within the LATA to which CLEC is not interconnected. To utilize MTA, CLEC must establish Local Interconnection Trunk Groups to a minimum of one (1) Access Tandem within each LATA as required. AT&T SOUTHEAST REGION 9-STATE will route CLEC originated 251(b)(5)/IntraLATA Toll traffic for LATA-wide transport and termination. Compensation for MTA is described in Section 6.4 below.

CA proposed language:

Local Only and/or Local Interconnection Trunk Group(s) in each LATA:

Tandem Trunking - AT&T SOUTHEAST REGION 9-STATE:

Section 251(b)(5)/IntraLATA Toll Traffic shall be routed on Local Interconnection Trunk Groups established at each AT&T SOUTHEAST REGION 9-STATE Access Tandem in the LATA where CA homes its NPA/NXX codes for calls destined to or from all AT&T SOUTHEAST REGION 9-STATE End Offices that subtend the designated Tandem. These trunk groups shall be two-way and will utilize SS7 signaling. Where CA does not interconnect at every Access Tandem switch location in the LATA, CA must use Multiple Tandem Access (MTA) to route traffic to End Users through those Tandems within the LATA to which CA is not interconnected. To utilize MTA, CA must establish Local Interconnection Trunk Groups to a minimum of one (1) Access Tandem within each LATA as required. AT&T SOUTHEAST REGION 9-STATE will route CA originated 251(b)(5)/IntraLATA Toll traffic for LATA-wide transport and termination. Compensation for MTA is described in Section 6.4 below.

CA Comments:

CA does not see any value in leaving language in the Agreement which does not apply because it is intended for states which the Agreement does not cover. To avoid future doubt about the applicability of various provisions, CA desires to remove provisions which are not applicable in Florida, so CA has proposed deletion of all non-Florida language and has not changed AT&T's proposed language for Florida.

Issue #35d: Strike agreement language that does not apply to Florida
Fourth Instance Appears: ICC, 4.3.5

AT&T proposed language:

Meet Point Trunk Group - AT&T-12STATE:
IXC carried traffic may, at CLEC's option be transported between CLEC's switch and the AT&T-12STATE Access Tandem Switch or Local/Access Tandem Switch over a Meet Point Trunk Group separate from Section 251(b)(5)/IntraLATA Toll Traffic. The Meet Point Trunk Group will be established for the transmission and routing of exchange access traffic between CLEC's End Users and IXCs via an AT&T-12STATE Access Tandem Switch or Local/Access Tandem Switch. Meet Point Trunk Groups shall be provisioned as two-way and each Party is responsible for delivering traffic utilizing SS7 signaling, except MF signaling will be used on a separate Meet Point Trunk Group to complete originating calls to switched access customers that use MF FGD signaling protocol.When AT&T-12STATE has more than one Access or Local/Access Tandem Switch in a local exchange area or LATA, CLEC shall establish a Meet Point Trunk Group to every AT&T-12STATE Access or Local/Access Tandem Switch where CLEC has homed its NXX code(s) or is the code holder of a pooled code block.

AT&T-12STATE will not block switched access traffic delivered to any AT&T-12STATE Access Tandem Switch or Local/Access Tandem Switch for completion on CLEC's network. The Parties understand and agree that Meet Point trunking arrangements are available and functional only to/from switched access customers who directly connect with any AT&T-12STATE Access Tandem Switch or Local/Access Tandem Switch that CLEC's switch subtends in each LATA. In no event will AT&T-12STATE be required to route such traffic through more than one of its Tandem Switches for connection to/from switched access customers. AT&T-12STATE shall have no responsibility to ensure that any switched access customer will accept traffic that CLEC directs to the switched access customer.

CLEC shall provide all SS7 signaling information including, without limitation, charge number and originating line information (OLI). For terminating FGD, AT&T-12STATE will pass all SS7 signaling information including, without limitation, Calling Party Number (CPN) if it receives CPN from FGD carriers. All privacy indicators will be honored. Where available, network signaling information such as transit network selection (TNS) parameter, carrier identification codes (CIC) (CCS platform) and CIC/OZZ information (non SS7 environment) will be provided by CLEC wherever such information is available and needed for call routing or billing. The Parties will follow all Ordering and Billing Forum (OBF) adopted standards pertaining to TNS and CIC/OZZ codes.

Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s).

CA proposed language:

None. Delete.

CA comment: See comment to issue 35c.

Issue #35e: Strike agreement language that does not apply to Florida
Fifth Instance Appears: ICC, 6.1.4

AT&T proposed language:

> For those CLECs to AT&T WEST REGION 2-STATE call usage based charges where actual charge information is not determinable by AT&T WEST REGION 2-STATE because the jurisdiction (i.e., intrastate vs. local) or origin of the CA to AT&T WEST REGION 2-STATE traffic is unidentifiable, the calls will be billed based upon the billed party's PLU/PIU declarations.

CA proposed language:

None. Delete.

CA comment: See comment to issue 35c.

Issue #35f: Strike agreement language that does not apply to Florida
Sixth Instance Appears: ICC, 6.6-6.7

AT&T proposed language:

Optional Calling Area Traffic - AT&T ARKANSAS, AT&T KANSAS and AT&T TEXAS:

Compensation for Optional Calling Area (OCA) Traffic, (also known as Optional Extended Area Service and Optional EAS) is for the termination of intercompany traffic to and from the Commission approved one-way or two-way optional exchanges(s) and the associated metropolitan area except mandatory extended traffic as addressed in Section 6.2 above. The transport and termination rate applies when AT&T ARKANSAS, AT&T KANSAS or AT&T TEXAS transports traffic and terminates it at its own switch.

In the context of this Attachment, Optional Calling Areas (OCAs) exist only in the states of Arkansas, Kansas and Texas and are outlined in the applicable state Local Exchange tariffs. This rate is independent of any retail service arrangement established by either Party. CLEC and AT&T ARKANSAS, AT&T KANSAS and AT&T TEXAS are not precluded from establishing their own local calling areas or prices for purposes of retail telephone service; however the terminating rates to be used for any such offering will still be administered as described in this Attachment.

The state specific OCAC Transport and Termination rates are identified in the Pricing Schedule.

MCA Traffic - AT&T MISSOURI:

For compensation purposes in the state of Missouri, Section 251(b)(5) Traffic and ISP-Bound Traffic shall be further defined as MCA Traffic and Non-MCA Traffic. MCA Traffic is traffic originated by a party providing a local calling scope plan pursuant to the Missouri Public Service Commission Orders in Case No. TO-92-306 and Case No. TO-99-483 (MCA Orders) and the call is Section 251(b)(5) Traffic based on the calling scope of the originating party pursuant to the MCA Orders. Non-MCA Traffic is all Section 251(b)(5) Traffic and ISP-Bound Traffic that is not defined as MCA Traffic.

Either party providing Metropolitan Calling Area (MCA) service shall offer the full calling scope prescribed in Case No. TO-92-306, without regard to the identity of the called Party's local service provider. The Parties may offer additional toll-free outbound calling or other services in conjunction with MCLEC service, but in any such offering the Party shall not identify any calling scope other than that prescribed in Case No. TO-92-306 as "MCA" service.

Pursuant to the Missouri Public Service Commission Order in Case No. TO-99-483, MCLEC Traffic shall be exchanged on a Bill and Keep intercompany compensation basis meaning that the Party originating a call defined as MCA Traffic shall not compensate the terminating Party for terminating the call.AThe Parties agree to use the LERG to provision the appropriate MCA NXXs in their networks. The LERG should be updated at least forty-five (45) calendar days in advance of opening a new code to allow the other Party the ability to make the necessary network modifications. If the Commission orders the Parties to use an

alternative other than the LERG, the Parties will comply with the Commission's final order.

If CLEC provides service via Resale or in conjunction with ported numbers in the MCA, the appropriate MCA NXXs will be updated by AT&T MISSOURI.

CA proposed language:

None. Delete.

CA comment:

See comment to issue 35c.

Issue #35g: Strike agreement language that does not apply to Florida
Sixth Instance Appears: ICC, 6.8

AT&T proposed language:

Primary Toll Carrier Arrangements:

A Primary Toll Carrier (PTC) is a company that provides IntraLATA Toll Traffic Service for its own End User customers and potentially for a Third Party ILEC's End User customers. In this ILEC arrangement, the PTC would receive the ILEC End User IntraLATA toll traffic revenues and pay the ILEC for originating these toll calls. The PTC would also pay the terminating switched access charges on behalf of the ILEC. In AT&T GEORGIA, AT&T KENTUCKY, AT&T NEVADA, AT&T OKLAHOMA, AT&T SOUTH CLECROLINA and/or AT&T TENNESSEE wherein Primary Toll Carrier arrangements are mandated and AT&T GEORGIA, AT&T KENTUCKY, AT&T NEVADA, AT&T OKLAHOMA, AT&T SOUTH CLECROLINA and/or AT&T TENNESSEE is functioning as the PTC for a Third Party ILEC's End User customers, the following provisions apply to the IntraLATA toll traffic which is subject to the PTC arrangement:

AT&T NEVADA and/or AT&T OKLAHOMA shall deliver such IntraLATA toll traffic that originated from that Third Party ILEC and terminated to CLEC as the terminating carrier in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. Where AT&T NEVADA and/or AT&T OKLAHOMA is functioning as the PTC for Third Party ILEC's End User customers, AT&T NEVADA and/or AT&T OKLAHOMA shall pay CLEC on behalf of the originating Third Party ILEC for the termination of such IntraLATA toll traffic at the terminating switched access rates as set forth in CLEC's intrastate access service tariff, but such compensation shall not exceed the compensation contained in the AT&T-212STATE intrastate access service tariff in the respective state.

AT&T GEORGIA, AT&T KENTUCKY, AT&T SOUTH CLECROLINA and/or AT&T TENNESSEE shall deliver such IntraLATA toll traffic that originated from that Third Party ILEC and terminated to CLEC as the terminating carrier in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. Where AT&T GEORGIA, AT&T KENTUCKY, AT&T SOUTH CLECROLINA and/or AT&T TENNESSEE is functioning as the PTC for a Third Party ILEC's End User customers, the following provisions apply to the minutes of use terminating to CLEC. AT&T GEORGIA, AT&T KENTUCKY, AT&T SOUTH CLECROLINA and/or AT&T TENNESSEE and CLEC will work cooperatively to develop a percentage of the amount of state specific PTC ILEC originated intraLATA toll minutes of use that are within the state specific total ILEC originated minutes of use reflected in the monthly EMI 11-01-01 Records provided to CLEC by AT&T GEORGIA, AT&T KENTUCKY, AT&T SOUTH CLECROLINA and/or AT&T TENNESSEE. CLEC will apply this state specific percentage against the state specific total ILEC originated EMI 11-01-01 minutes of use each month to determine the amount of PTC intraLATA toll minutes of use for which AT&T GEORGIA, AT&T KENTUCKY, AT&T SOUTH CLECROLINA and/or AT&T TENNESSEE will compensate CLEC. Such percentage will be updated no more than twice each year. AT&T GEORGIA, AT&T KENTUCKY, AT&T SOUTH CLECROLINA and/or AT&T TENNESSEE will compensate

CLEC for this PTC traffic as it would for AT&T-21STATE originated traffic as set forth in CLEC's Interconnection Agreement with AT&T-21STATE.

AT&T GEORGIA, AT&T KENTUCKY, AT&T NEVADA, AT&T OKLAHOMA, AT&T SOUTH CLECROLINA and/or AT&T TENNESSEE shall deliver such IntraLATA toll traffic that originated from CLEC and terminated to the Third Party ILEC as the terminating carrier in accordance with the terms and conditions of such PTC arrangement mandated by the respective state Commission. CLEC shall pay AT&T GEORGIA, AT&T KENTUCKY, AT&T NEVADA, AT&T OKLAHOMA, AT&T SOUTH CLECROLINA and/or AT&T TENNESSEE for the use of its facilities at the rates set forth in AT&T-21STATE's intrastate access service tariff in the respective state. CLEC shall pay the ILEC directly for the termination of such traffic originated from CLEC.

CA proposed language:

None. Delete.

CA comment:

See comment to issue 35c.

Issue #36: CA's time window to dispute a bill should begin when the bill is received by CA

Appears: GTC, 13.1.2

AT&T proposed language:

> Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill **dated** within the twelve (12) months immediately preceding the date on which the Billing Party received notice of such Disputed Amounts.

CA proposed language:

> Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill within the twelve (12) months immediately **following the date on which the Billed Party first received the detailed bill from the Billing Party.**

CA comments:

CA should not be foreclosed from filing billing disputes in cases with AT&T did not timely deliver bills and later sends copies to CA, or when AT&T sends a summary but fails to send a detailed bill and delays sending the proper detail to CA. CA is unable to file disputes unless it receives a detailed bill; AT&T's dispute process requires data that is only found on a detailed bill. AT&T never responded to CA on this issue during negotiations.

Issue #37: CA should be entitled to dispute a class of charges as one line item

Appears: GTC, 13.4.3.8

AT&T proposed language:

None

CA proposed language:

The disputing party may dispute a class of related charges in a single dispute notice, as long as the dispute information provided relates to all disputes in the class as a whole.

CA comments:

CA should be entitled to dispute a class of charges in a single dispute notice because AT&T may bill for an 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 never responded to CA on this issue in negotiations.

Issue #38: CA should not lose its right to dispute charges solely because they are unpaid

Appears: GTC, 13.4.4

AT&T proposed language:

> When CLEC is the Disputing Party, CLEC must provide evidence to AT&T-21STATE that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in Section 11.10 above of this Agreement and deposited all Unpaid Charges relating to Resale Services and 251(c)(3) UNEs into that escrow account in order for that billing claim to be deemed a "dispute". Failure to provide the information and evidence required by this Section 13.0 not later than twenty-nine (29) calendar days following the Bill Due Date shall constitute CLEC's irrevocable and full waiver of its right to dispute the subject charges.

CA proposed language:

> None

CA comments:

CA believes that this AT&T provision is clearly anti-competitive and unfair. First, it seeks to unilaterally revoke CA's right to dispute unpaid charges while preserving that right for AT&T regarding its bills from CA. This is clearly not parity. Second, AT&T and its parent AT&T wield monopoly market power, with a net worth many orders of magnitude greater than CA. It is clearly unfair and inexcusable for AT&T to be entitled to bill CA any amount it chooses "in error," and to then require the comparably-tiny CA to raise the capital to pay that amount as a condition to filing a billing dispute to resolve the problem which was solely caused by AT&T in the first place. CA also notes that in addition to the parity issue raised above, AT&T would suffer no detriment whatsoever in this process according to its proposed language; the CA would entirely bear the cost and effects of having to raise potentially tremendous capital to pay a debt that it did not owe based solely upon AT&T's "mistake." CA's ability to dispute charges must be absolute, equal to the dispute ability that AT&T has reserved for itself regarding its own bills from CA. AT&T failed to respond to CA on this issue in negotiations.

Issue #39: The Commission retains jurisdiction to decide all disputes between the parties

Appears: GTC, 13.7.2, 13.8.1

AT&T proposed language:

> The Parties agree that any actions and/or claims seeking to compel compliance with the Dispute Resolution process should be brought before the Commission in the state where the services in dispute are provided. However, each Party reserves any rights it may have to seek review of any ruling made by the Commission concerning this Agreement by a court of competent jurisdiction.

CA proposed language:

> Commission. The Parties recognize and agree that the Commission has continuing jurisdiction to implement and enforce all terms and conditions of this Agreement. Accordingly, the Parties agree that any dispute arising out of or relating to this Agreement that the Parties cannot resolve through Informal Dispute Resolution as provided above may be submitted to the Commission for resolution. During the Commission proceeding each Party shall continue to perform its obligations under this Agreement; provided, however, that neither Party shall be required to act in any unlawful fashion. This provision shall preclude the Parties from first seeking relief available in other venues unless the parties agree upon such alternate venue, except for actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement or suit to compel compliance with this Section.
>
> The Parties agree that any actions and/or claims seeking to compel compliance with the Dispute Resolution process should be brought before the Commission in the state where the services in dispute are provided. However, each Party reserves any rights it may have to seek review of any ruling made by the Commission concerning this Agreement by a court of competent jurisdiction. **Nothing in this agreement shall be construed to prohibit a party from seeking relief from the Commission at any time for an alleged violation of this agreement or of any law or regulation by the other party, whether or not dispute resolution procedures have been followed.**

CA comments:

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 prefers its elective commercial arbitration provision which CA has not stricken because it is elective. However, CA would never elect for commercial arbitration because CA believes commercial arbitrators lack the subject matter expertise to decide complex disputes between telecommunications companies.

CA also believes that it has a statutory right to seek 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.

Issue #40: CA should not indemnify AT&T for gross negligence or willful misconduct

Appears: GTC, 16.1 – 16.7

AT&T proposed language:

> Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any Loss relating to or arising out of any cause whatsoever, including any negligent act or omission (whether willful or inadvertent) whether based in contract, tort, strict liability or otherwise, relating to the performance of this Agreement, shall not exceed a credit for the actual cost of the facilities, products, services or functions not performed or provided or improperly performed or provided.
>
> Except as otherwise expressly provided in specific Attachments, in the case of any Loss alleged or claimed by a Third Party to have arisen out of the negligence or willful misconduct of any Party, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.
>
> A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users or Third Parties that relate to any Interconnection Services provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such End User or Third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the End User or Third Party for the Interconnection Services that gave rise to such Loss and (ii) any Consequential Damages. If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability described in this Section 16.0.
>
> Neither CLEC nor AT&T-21STATE shall be liable to the other Party for any Consequential Damages suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including negligence of any kind, whether active or passive (and including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement constitutes a violation of the Act or other statute), and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions; provided that the foregoing shall not limit a Party's obligation under Section 16.0 to indemnify, defend, and hold the other Party harmless against any amounts payable to a Third Party, including any Losses, and Consequential Damages of such Third Party; provided, however, that nothing in this Section 16.4 shall impose indemnity obligations on a Party for any Loss or Consequential Damages suffered by that Party's End User in connection with any affected Interconnection Services. Except as provided in the prior sentence, each Party ("Indemnifying Party") hereby releases and holds harmless the other Party ("Indemnitee") (and Indemnitee's Affiliates, and its respective officers, directors, employees and agents) against any Loss or Claim made by the Indemnifying Party's End User.

AT&T-21STATE shall not be liable for damages to an End User's premises resulting from the furnishing of any Interconnection Services, including, if applicable, the installation and removal of equipment and associated wiring, and Collocation Equipment unless the damage is caused by AT&T-21STATE's gross negligence or willful misconduct. AT&T-21STATE does not guarantee or make any warranty with respect to Interconnection Services when used in an explosive atmosphere.

CLEC hereby releases AT&T-21STATE from any and all liability for damages due to errors or omissions in CLEC's End User listing information as provided by CLEC to AT&T-21STATE under this Agreement, including any errors or omissions occurring in the Directory Database or the White Pages directory, or any claims by reason of delay in providing the Directory Assistance listing information, printing or provisioning of non-published numbers or the printing or providing of CLEC End User information in the White Pages directory including, but not limited to, special, indirect, Consequential, punitive or incidental damages.

AT&T-21STATE shall not be liable to CLEC, its End User or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service.

CA proposed language:

Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any Loss relating to or arising out of any cause whatsoever, and **not including any act of gross negligence or willful misconduct** whether based in contract, tort, strict liability or otherwise, relating to the performance of this Agreement, shall not exceed **the actual cost** of the facilities, products, services or functions not performed or provided or improperly performed or provided.

Except as otherwise expressly provided in specific Attachments, in the case of any Loss alleged or claimed by a Third Party to have arisen out of the negligence or willful misconduct of any Party, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.

A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users or Third Parties that relate to any Interconnection Services provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such End User or Third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the End User or Third Party for the Interconnection Services that gave rise to such Loss and (ii) any Consequential Damages. If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability described in this Section 16.0. **This provision shall not apply in any case of gross negligence or willful misconduct.**

Neither party shall be liable to the other Party for any Consequential Damages suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto,; provided that the foregoing shall not limit a Party's obligation under Section 16.0 to indemnify, defend, and hold the other Party harmless against any amounts payable to a Third Party, including any Losses, and Consequential Damages of such Third Party; provided, however, that nothing in this Section 16.4 shall impose indemnity obligations on a Party for any Loss or Consequential Damages suffered by that Party's End User in connection with any affected Services.

Except as provided in the prior sentence, each Party ("Indemnifying Party") hereby releases and holds harmless the other Party ("Indemnitee") (and Indemnitee's Affiliates, and its respective officers, directors, employees and agents) against any Loss or Claim made by the Indemnifying Party's End User. **This provision shall not apply in any case of gross negligence or willful misconduct.**

Neither party shall be liable for damages to an End User's premises resulting from the furnishing of any Services, including, if applicable, the installation and removal of equipment and associated wiring, **and Collocation or Central Office Equipment** unless the damage is caused by **a party's** gross negligence or willful misconduct. AT&T-21STATE does not guarantee or make any warranty with respect to Interconnection Services when used in an explosive atmosphere.

CA hereby releases AT&T-21STATE from any and all liability for damages due to errors or omissions in CA's End User listing information as provided by CA to AT&T-21STATE under this Agreement, including any errors or omissions occurring in the Directory Database or the White Pages directory, or any claims by reason of delay in providing the Directory Assistance listing information, printing or provisioning of non-published numbers or the printing or providing of CA End User information in the White Pages directory including, but not limited to, special, indirect, Consequential, punitive or incidental damages. **This provision shall not apply in any case of gross negligence or willful misconduct.**

AT&T-21STATE shall not be liable to CA, its End User or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service, **except in cases of gross negligence or willful misconduct.**

CA comments:

CA has revised AT&T's proposed language to make clear that neither party is held harmless or indemnified for its own gross negligence or willful misconduct. CA revised AT&T's reference in 16.5 from "Collocation Equipment" to "Collocation or Central Office Equipment" because CA's equipment is called "Collocation Equipment" and AT&T's equipment in the same location is called "Central Office Equipment." Therefore, this change is necessary in order to maintain parity of liability between the parties because AT&T's language held it harmless for accidental damage to CA's equipment but did not hold CA harmless for accidental damage to AT&T's equipment in the same location. AT&T never responded to CA on this issue in negotiations.

Issue #41: Each party is responsible for the actions of its employees, agents, affiliates

Appears: GTC, 17.1

AT&T proposed language:

> In the event that CLEC consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party place orders under this Agreement using CLEC's company codes or identifiers, all such entities shall be jointly and severally liable for CLEC's obligations under this Agreement.

CA proposed language:

> In the event that **either party** consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party place orders under this Agreement **on behalf of a party with or without using the party's company codes or identifiers**, **the party shall be solely liable to the other for obligations under this Agreement related to the actions of its affiliate, agent or designate. This agreement does not provide for action against or recovery from any third party, except as otherwise provided herein.**

CA comments:

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. AT&T never responded to CA on this issue in negotiations.

Issue #42: CA is only responsible for damage caused by its actions and those of its agents

Appears: GTC, 18.12

AT&T proposed language:

> CLEC shall reimburse AT&T-21STATE for damages to AT&T-21STATE's facilities utilized to provide Interconnection Services hereunder caused by the negligence or willful act of CLEC, its agents or subcontractors or CLEC's End User or resulting from CLEC's improper use of AT&T-21STATE's facilities, or due to malfunction of any facilities, functions, products, services or equipment provided by any person or entity other than AT&T-22STATE. Upon reimbursement for damages, AT&T-21STATE will cooperate with CLEC in prosecuting a claim against the person causing such damage. CLEC shall be subrogated to the right of recovery by AT&T-21STATE for the damages to the extent of such payment.

CA proposed language:

> **Damaging Party** shall reimburse **Damaged Party** for damages to **Damaged Party's** facilities utilized to provide Interconnection Services hereunder caused by the negligence or willful act of **Damaging Party**, its agents or subcontractors or **Damaging Party's** End User or resulting from **Damaging Party's** improper use of **Damaged Party's** facilities, or due to malfunction of any facilities, functions, products, services or equipment provided **Damaging Party, its affiliates, agents, or contractors.** Upon reimbursement for damages, **Damaged Party** will cooperate with **Damaging Party** in prosecuting a claim against the person causing such damage. **Damaging Party** shall be subrogated to the right of recovery by **Damaged Party** for the damages to the extent of such payment.

CA comments:

CA cannot and should not be financially responsible for damage caused by persons not affiliated with or acting on behalf of CA. AT&T's language would unfairly permit it to hold CA responsible for the acts of other CAs or even the general public where there is no connection to CA whatsoever. CA has revised this language to provide parity in treatment between the parties in case of willful damage by one party's agent to the other's property. AT&T did not respond to CA on this issue in negotiations.

Issue #43a: AT&T may not arbitrarily disconnect CA Unbundled Network Elements
First Instance Appears: GTC, 28.4

AT&T proposed language:

> When an End User of CLEC elects to discontinue service and to transfer service to another Local Exchange Carrier, including AT&T-21STATE, AT&T-21STATE shall have the right to reuse the facilities provided to CLEC, regardless of whether those facilities are provided as network elements or as part of a resold service, and regardless of whether the End User served with such facilities has paid all charges to CLEC or has been denied service for nonpayment or otherwise. AT&T-21STATE will notify CLEC that such a request has been processed after the disconnect order has been completed.

CA proposed language:

> When an End User of CA elects to discontinue service and to transfer service to another Local Exchange Carrier, including AT&T-21STATE, AT&T-21STATE shall have the right to reuse the facilities provided to CA, regardless of whether those facilities are provided as network elements or as part of a resold service, and regardless of whether the End User served with such facilities has paid all charges to CA or has been denied service for nonpayment or otherwise. AT&T-21STATE will notify CA that such a request has been processed after the disconnect order has been completed. **This provision shall only apply to lines or circuits ordered in the name of the End User which has made such election, and shall not apply to any facilities provided by AT&T-21STATE to CA for the purpose of serving multiple End Users or where the End User names do not match.**

CA comments:

CA is entitled to and may choose to provide service to multiple end-users using shared Unbundled Network Elements ("UNE(s)"), such as a commercial office building, a shopping center or apartment complex. In such cases, CA may order the UNEsunder its own name and use the UNEs as a component of its overall service to its End Users. Once a UNE is in-service after being ordered by CA, the UNE becomes a part of CA's network which CA, and not AT&T, controls. AT&T should not have the unilateral right to disconnect a component of CA's network which is being paid for by CA when CA is not in default under this Agreement and CA has not placed a disconnect order with AT&T for the affected UNE(s).

Issue #43b: AT&T may not arbitrarily disconnect CA Unbundled Network Elements
Second Instance Appears: UNE, 1.10

AT&T proposed language:

> When an End User of CLEC elects to discontinue service and to transfer service to another local exchange carrier, including AT&T-21STATE, AT&T-21STATE shall have the right to reuse the facilities provided to CLEC, regardless of whether those facilities are provided as network elements or as part of a resold service, and regardless of whether the End User served with such facilities has paid all charges to CLEC or has been denied service for nonpayment or otherwise. AT&T-21STATE will notify CLEC that such a request has been processed after the disconnect order has been completed.

CA proposed language:

> When an End User of CA elects to discontinue service and to transfer service to another local exchange carrier, including AT&T-21STATE, AT&T-21STATE shall have the right to reuse the facilities provided to CA, regardless of whether those facilities are provided as network elements or as part of a resold service, and regardless of whether the End User served with such facilities has paid all charges to CA or has been denied service for nonpayment or otherwise. AT&T-21STATE will reuse the facilities and notify CA that such a request has been processed after the disconnect order has been completed, **only in cases where the Customer Service Record for the CA facility matches the name of the subscriber which has ordered service. If the Customer Service Record does not match the subscriber name, then AT&T shall not reuse or tamper with the facility without first confirming with CA that the UNE facility is dedicated to that specific end-user customer and is not also used to provide service to other end-user customers. CA shall timely cooperate with such requests from AT&T-21STATE and shall release facilities used solely for the end-user customer that desires to switch to AT&T-21STATE service. AT&T-21STATE shall not tamper with or reuse UNE facilities which have not been disconnected by CA unless CA confirms that the facility exclusively serves the specific end-user customer which AT&T-21STATE seeks to serve or CA fails to respond to AT&T-21STATE within 5 business days of its written request to re-use the facility.**

CA comments:

CA is entitled to and may choose to provide service to multiple end-users using shared Unbundled Network Elements. Once a UNE is in-service after being ordered by CA, the UNE becomes a part of CA's network. AT&T should not have the unilateral right to disconnect a component of CA's network which is being paid for by CA when CA is not in default under this Agreement and CA has not placed a disconnect order with AT&T for the affected UNE(s). Further, AT&T's language only provides notice to CA after CA's service has been disconnected and re-used by AT&T, without any validation that the service belongs to AT&T's customer. This betrays a total disregard by AT&T for continuity of service to CA customers. AT&T did not respond to CA on this issue in negotiations.

Issue #44: Taxes must be billed as a separate line item
Appears: GTC, 37.1

AT&T proposed language:

> Except as otherwise provided in this Section, with respect to any purchase of products or services under this Agreement, if any Tax is required or permitted by Applicable Law to be billed to and/or collected from the purchasing Party by the providing Party, then: (i) the providing Party shall have the right to bill the purchasing Party for such Tax; (ii) the purchasing Party shall pay such Tax to the providing Party; and (iii) the providing Party shall pay or remit such Tax to the respective Governmental Authority. **Whenever possible**, Taxes shall be billed as a separate item on the invoice; **provided, however, that failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax**. Nothing shall prevent the providing Party from paying any Tax to the appropriate Governmental Authority prior to the time: (i) it bills the purchasing Party for such Tax, or (ii) it collects the Tax from the purchasing Party. If the providing Party fails to bill the purchasing Party for a Tax at the time of billing the products or services to which the Tax relates, then, as between the providing Party and the purchasing Party, the providing Party shall be liable for any penalties or interest thereon. However, if the purchasing Party fails to pay any Tax properly billed by the providing Party, then, as between the providing Party and the purchasing Party, the purchasing Party shall be solely responsible for payment of the Tax and any penalties or interest thereon. Subject to the provisions of this Section 35.0 governing contests of disputed Taxes, the purchasing Party shall be liable for and the providing Party may collect from the purchasing Party any Tax, including any interest or penalties for which the purchasing Party would be liable under this subsection, which is paid by Providing Party to the respective Governmental Authority within the applicable statue of limitations periods for assessment or collection of such Tax, including extensions; provided, however, that the providing Party notifies the purchasing Party within the earlier of (i) sixty (60) days following the running of such limitations period for including extensions, or (ii) six (6) years following the purchasing Party's payment for the products or services to which such Tax relates.

CA proposed language:

> Except as otherwise provided in this Section, with respect to any purchase of products or services under this Agreement, if any Tax is required or permitted by Applicable Law to be billed to and/or collected from the purchasing Party by the providing Party, then: (i) the providing Party shall have the right to bill the purchasing Party for such Tax; (ii) the purchasing Party shall pay such Tax to the providing Party; and (iii) the providing Party shall pay or remit such Tax to the respective Governmental Authority**. Taxes shall be billed as a separate item on the invoice.** Nothing shall prevent the providing Party from paying any Tax to the appropriate Governmental Authority prior to the time: (i) it bills the purchasing Party for such Tax, or (ii) it collects the Tax from the purchasing Party. If the providing Party fails to bill the purchasing Party for a Tax at the time of billing the products or services to which the Tax relates, then, as between the providing Party and the purchasing Party, the providing Party shall be liable for any penalties or interest thereon. However, if the purchasing Party fails to pay any Tax properly billed by the providing Party, then, as between the providing Party and the purchasing Party, the purchasing Party shall be solely responsible

for payment of the Tax and any penalties or interest thereon. Subject to the provisions of this Section 35.0 governing contests of disputed Taxes, the purchasing Party shall be liable for and the providing Party may collect from the purchasing Party any Tax, including any interest or penalties for which the purchasing Party would be liable under this subsection, which is paid by Providing Party to the respective Governmental Authority within the applicable statue of limitations periods for assessment or collection of such Tax, including extensions; provided, however, that the providing Party notifies the purchasing Party within the earlier of (i) sixty (60) days following the running of such limitations period for including extensions, or (ii) six (6) years following the purchasing Party's payment for the products or services to which such Tax relates.

CA comments:

Taxes should be billed as separate line items so CA may audit its invoices. AT&T did not respond to CA on this issue in negotiations.

Issue #45a: AT&T may not unreasonably deny CA exemption from taxes
First Instance Appears: GTC, 37.3-37.4

AT&T proposed language:

To the extent a purchase of products or services under this Agreement is claimed by the purchasing Party to be for resale or otherwise exempt from a Tax, the purchasing Party shall furnish to the providing Party an exemption certificate in the form prescribed by the providing Party and any other information or documentation required by Applicable Law or the respective Governmental Authority. Prior to receiving such exemption certificate and any such other required information or documentation, the Providing Party shall have the right to bill, and the Purchasing Party shall pay, Tax on any products or services furnished hereunder as if no exemption were available, subject to the right of the Purchasing Party to pursue a claim for credit or refund of any such Tax pursuant to the provisions of this Section 35.0 and the remedies available under Applicable Law. If it is the position of the purchasing Party that Applicable Law exempts or excludes a purchase of products or services under this Agreement from a Tax, or that the Tax otherwise does not apply to such a purchase, but Applicable Law does not also provide a specific procedure for claiming such exemption or exclusion or for the purchaser to contest the application of the Tax directly with the respective Governmental Authority prior to payment, then the providing Party may in its discretion agree not to bill and/or not to require payment of such Tax by the purchasing Party, provided that the purchasing Party (i) furnishes the providing Party with any exemption certificate requested by and in the form prescribed by the providing Party, (ii) furnishes the providing Party with a letter signed by an officer of the purchasing Party setting forth the basis of the purchasing Party's position under Applicable Law; and (iii) furnishes the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any Tax, interest, penalties, loss, cost or expenses (including attorney fees) that may be incurred by the providing Party in connection with any claim asserted or actions taken by the respective Governmental Authority to assess or collect such Tax from the providing Party.

To the extent permitted by and pursuant to Applicable Law, and subject to the provisions of this Section 35.0, the purchasing Party shall have the right to contest with the respective Governmental Authority, or if necessary under Applicable Law to have the providing Party contest (in either case at the purchasing Party's expense) any Tax that the purchasing Party asserts is not applicable, from which it claims an exemption or exclusion, or which it claims to have paid in error; provided, however, that (i) the purchasing Party shall ensure that no lien is attached to any asset of the providing Party as a result of any contest of a disputed Tax; (ii) with respect to any Tax that could be assessed against or collected from the providing Party by the respective Governmental Authority, the providing Party shall retain the right to determine the manner of contesting such disputed Tax, including but not limited to a decision that the disputed Tax will be contested by pursuing a claim for credit or refund; (iii) except to the extent that the providing Party has agreed pursuant to this Section 35.0 not to bill and/or not to require payment of such Tax by the purchasing Party pending the outcome of such contest, the purchasing Party pays any such Tax previously billed by the providing Party and continues paying such Tax as billed by the providing Party pending the

outcome of such contest. In the event that a disputed Tax is to be contested by pursuing a claim for credit or refund, if requested in writing by the purchasing Party, the providing Party shall facilitate such contest (i) by assigning to the purchasing Party its right to claim a credit or refund, if such an assignment is permitted under Applicable Law; or (ii) if an assignment is not permitted, by filing and pursuing the claim on behalf of the purchasing Party but at the purchasing Party's expense. Except as otherwise expressly provided in this Section 35.0, nothing in this Agreement shall be construed to impair, limit, restrict or otherwise affect the right of the providing Party to contest a Tax that could be assessed against or collected from it by the respective Governmental Authority. With respect to any contest of a disputed Tax resulting in a refund, credit or other recovery, as between the purchasing Party and the providing Party, the purchasing Party shall be entitled to the amount that it previously paid, plus any applicable interest allowed on the recovery that is attributable to such amount, and the providing Party shall be entitled to all other amounts..

CA proposed language:

To the extent a purchase of products or services under this Agreement is claimed by the purchasing Party to be for resale or otherwise exempt from a Tax, the purchasing Party shall furnish to the providing Party an exemption certificate in the form **reasonably** prescribed by the providing Party and any other information or documentation required by Applicable Law or the respective Governmental Authority. **Purchasing Party shall have the right to claim and receive exemption from any governmental tax, fee or surcharge which it can reasonably prove that it remits directly to the proper government entity. If an official certificate of exemption does not exist for a specific tax or government surcharge, the parties agree that proof of payment of the tax or surcharge directly to the government entity shall constitute adequate proof of exemption.** Prior to receiving such exemption certificate and any such other required information or documentation, the Providing Party shall have the right to bill, and the Purchasing Party shall pay, Tax on any products or services furnished hereunder as if no exemption were available, subject to the right of the Purchasing Party to pursue a claim for credit or refund of any such Tax pursuant to the provisions of this Section 35.0 and the remedies available under Applicable Law. If it is the position of the purchasing Party that Applicable Law exempts or excludes a purchase of products or services under this Agreement from a Tax, or that the Tax otherwise does not apply to such a purchase, but Applicable Law does not also provide a specific procedure for claiming such exemption or exclusion or for the purchaser to contest the application of the Tax directly with the respective Governmental Authority prior to payment, then the providing Party **shall not** require payment of such Tax by the purchasing Party, provided that the purchasing Party (i) furnishes the providing Party with any exemption certificate requested by and in the form **reasonably** prescribed by the providing Party, (ii) furnishes the providing Party with a letter signed by an officer of the purchasing Party setting forth the basis of the purchasing Party's position under Applicable Law; and (iii) furnishes the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any Tax, interest, penalties, loss, cost or expenses (including attorney fees) that may be incurred by the providing Party in connection with any claim asserted or actions taken by the respective Governmental Authority to assess or collect such Tax from the providing Party.

To the extent permitted by and pursuant to Applicable Law, and subject to the provisions of this Section 35.0, the purchasing Party shall have the right to contest with the respective Governmental Authority, or if necessary under Applicable Law to have the providing Party contest (in either case at the purchasing Party's expense) any Tax that the purchasing Party asserts is not applicable, from which it claims an exemption or exclusion, or which it claims to have paid in error; provided, however, that (i) the purchasing Party shall ensure that no lien is attached to any asset of the providing Party as a result of any contest of a disputed Tax; (ii) with respect to any Tax that could be assessed against or collected from the providing Party by the respective Governmental Authority, the providing Party shall retain the right to determine the manner of contesting such disputed Tax, including but not limited to a decision that the disputed Tax will be contested by pursuing a claim for credit or refund; (iii) except to the extent that the providing Party has agreed pursuant to this Section 35.0 not to bill and/or not to require payment of such Tax by the purchasing Party pending the outcome of such contest, the purchasing Party pays any such Tax previously billed by the providing Party and continues paying such Tax as billed by the providing Party pending the outcome of such contest. In the event that a disputed Tax is to be contested by pursuing a claim for credit or refund, if requested in writing by the purchasing Party, the providing Party shall facilitate such contest (i) by assigning to the purchasing Party its right to claim a credit or refund, if such an assignment is permitted under Applicable Law; or (ii) if an assignment is not permitted, by filing and pursuing the claim on behalf of the purchasing Party but at the purchasing Party's expense. Except as otherwise expressly provided in this Section 35.0, nothing in this Agreement shall be construed to impair, limit, restrict or otherwise affect the right of the providing Party to contest a Tax that could be assessed against or collected from it by the respective Governmental Authority. With respect to any contest of a disputed Tax resulting in a refund, credit or other recovery, as between the purchasing Party and the providing Party, the purchasing Party shall be entitled to the amount that it previously paid, plus any applicable interest allowed on the recovery that is attributable to such amount, and the providing Party shall be entitled to all other amounts. **Taxes for which the Purchasing Party has provided evidence of direct payment to the Governmental Authority shall not be treated as contested under this provision and shall be entitled to exemption by the Providing Party.**

CA comments:

AT&T should exempt CA from taxes for which CA has provided the appropriate documentation. AT&T did not respond to CA on this issue in negotiations.

Issue #45b: AT&T may not unreasonably deny CA exemption from taxes
Second Instance Appears: E911, 5.2.2

AT&T proposed language:

For Resellers, the ILEC shall serve as a clearinghouse between Resellers and PSAPs except where state law requires Reseller to collect and remit directly to the appropriate 911 Authority. The Parties agree that:

AT&T-21STATE shall include Reseller information when providing the 911 Customer with detailed monthly listings of the actual number of access lines, or breakdowns between the types of access lines (e.g., residential, business, payphone, Centrex, PBX, and exempt lines).

AT&T SOUTHEAST REGION 9-STATE will provide the 911 Customer a monthly settlement letter which provides the total number of access lines broken down into residence and business line totals only. If state statutes require a break out of Reseller information, the AT&T SOUTHEAST REGION 9-STATE shall include this information upon request by the 911 Customer.

CA proposed language:

For Resellers, the ILEC shall serve as a clearinghouse between Resellers and PSAPs except where state law requires Reseller to collect and remit directly to the appropriate 911 Authority**, or in the case of a Facility based CLEC which also has resale service from AT&T-21STATE, and which remits and reports its facility-based and resale-based data in the aggregate to the 911 Customer**.

The Parties agree that:

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

CA comments:

CA removed the paragraph about AT&T-12STATE as not relevant to Florida. Because CA will be a facilities-based AND a Resale CA, 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. Therefore, 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.

Issue #46a: CA should be permitted to purchase 911 service for its network from any carrier

First Instance Appears: E911, 3.3.2

AT&T proposed language:

> AT&T-21STATE will provide facilities to interconnect the CLEC to the AT&T-21STATE**'s** E911SR, as specified in Attachment 02 -Network Interconnection of this Agreement or per the requirements set forth via the applicable state tariff. Additionally, CLEC has the option to secure interconnection facilities from another provider or provide such interconnection using their own facilities. If diverse facilities are requested by CLEC, AT&T-21STATE will provide such diversity where technically feasible, at standard applicable tariff rates.

CA proposed language:

> AT&T-21STATE will provide facilities to interconnect the CA to the AT&T-21STATE**'s** E911SR, as specified in Attachment 02 -Network Interconnection of this Agreement or per the requirements set forth via the applicable state tariff. Additionally, CA has the option to secure interconnection facilities from another provider or provide such interconnection using their own facilities. If diverse facilities are requested by CA, AT&T-21STATE will provide such diversity where technically feasible, at standard applicable tariff rates. **Notwithstanding its legal and/or regulatory requirement to provide E911 service to its End Users, nothing in this agreement shall prohibit CA from obtaining any Local Interconnection Service under this agreement, even if CA chooses to obtain E911 interconnection from another provider/carrier.**

CA comments:

In 2014, there are ample competitors for CAs 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 the CA, not AT&T, to provide reliable 911 service to CA 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 a AT&T competitor.

Issue #46b: CA should be permitted to purchase 911 service for its network from any carrier

Second Instance Appears: E911, 4.1-4.3

AT&T proposed language with CA additions in **bold**:

Call Routing (for CLEC's own switches):

CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-21STATE E911 SR location.

CLEC will forward the ANI information of the party calling 911 to the AT&T-21STATE E911 SR Facilities and Trunking (for CLEC's own switches):

CLEC shall be financially responsible for the transport facilities to each AT&T-21STATE E911 SR that serves the Exchange Areas in which CLEC is authorized to and will provide Telephone Exchange Service.

CLEC acknowledges that its End Users in a single local calling scope may be served by different E911 SRs and CLEC shall be financially responsible for the transport facilities to route 911 calls from its End Users to the proper E911 SR.

CLEC shall order a minimum of two (2) one-way outgoing E911 Trunk(s) dedicated for originating 911 Emergency Service calls for each default PSAP or default ESN to interconnect to each appropriate AT&T-21STATE E911 SR, where applicable. Where Signaling System 7 (SS7) connectivity is available and required by the applicable E911 Customer, the Parties agree to implement Common Channel Signaling (CCS) trunking rather than Multi-Frequency (MF) trunking.

CLEC is responsible for ordering a separate E911 Trunk group from AT&T-21STATE for each county, default PSAP or other geographic area that the CLEC serves if the E911 Customer for such county or geographic area has a specified varying default routing condition. Where PSAPs do not have the technical capability to receive 10-digit ANI, E911 traffic must be transmitted over a separate trunk group specific to the underlying technology. CLEC will have administrative control for the purpose of issuing ASRs on this trunk group. Where the parties utilize SS7 signaling and the E911 network has the technology available, only one (1) E911 Trunk group shall be established to handle multiple NPAs within the local Exchange Area or LATA. If the E911 network does not have the appropriate technology available, a SS7 trunk group shall be established per NPA in the local Exchange Area or LATA. In addition, 911 traffic originating in one (1) NPA must be transmitted over a separate 911 Trunk group from 911 traffic originating in any other NPA 911. CLEC shall maintain facility transport capacity sufficient to route 911 traffic over trunks dedicated to 911 Interconnection between the CLEC switch and the AT&T-21STATE E911 SR. CLEC shall order sufficient trunking to route CLEC's originating 911 calls to the designated AT&T-21STATE E911 SR.

Diverse (i.e., separate) 911 facilities are highly recommended and may be required by the Commission or E911 Customer. If required by the E911 Customer, diverse 911 Trunks shall be ordered in the same fashion as the primary 911 Trunks. CA is responsible for initiating trunking and facility orders for diverse routes for 911 Interconnection.

CA is responsible for determining the proper quantity of trunks and transport facilities from its switch (es) to interconnect with the AT&T-21STATE E911 SR.
CA shall engineer its 911 Trunks to attain a minimum P.01 grade of service as measured using the time consistent average busy season busy hour twenty (20) day averaged loads applied to industry standard Neal-Wilkinson Trunk Group Capacity algorithms (using Medium day-to-day Variation and 1.0 Peakedness factor), or such other minimum grade of service as required by Applicable Law.

CA shall monitor its 911 Trunks for the purpose of determining originating network traffic volumes. If CA's traffic study indicates that additional 911 Trunks are needed to meet the current level of 911 call volumes, CA shall provision additional 911 Trunks for Interconnection with AT&T-21STATE.
CA is responsible for the isolation, coordination and restoration of all 911 facility and trunking maintenance problems from CA's demarcation (for example, collocation) to the AT&T-21STATE E911 SR(s). CA is responsible for advising AT&T-21STATE of the 911 Trunk identification and the fact that the trunks are dedicated for 911 traffic when notifying AT&T-21STATE of a failure or outage. The Parties agree to work cooperatively and expeditiously to resolve any 911 outage. AT&T-21STATE will refer network trouble to CA if no defect is found in AT&T-21STATE's 911 network. The Parties agree that 911 network problem resolution will be managed expeditiously at all times.
CA will not turn up live traffic until successful testing of E911 Trunks is completed by both Parties.

Where required, CA will comply with Commission directives regarding 911 facility and/or 911 Trunking requirements.

Database:
Once the 911 Interconnection between CA and all appropriate AT&T-21STATE E911 SR(s) has been established and tested, CA or its representatives shall be responsible for providing CA's End User 911 Records to AT&T-21STATE for inclusion in AT&T-21STATE's DBMS on a timely basis. CA or its agent shall provide initial and ongoing updates of CA's End User 911 Records that are Master Street Address Guide (MSAG) valid in electronic format based upon established NENA standards. CA shall adopt use of a Company/NENA ID on all CA End User 911 Records in accordance with NENA standards. The Company ID is used to identify the carrier of record in facility configurations. CA is responsible for providing AT&T-21STATE

updates to the E911 database; in addition, CA is responsible for correcting any errors that may occur during the entry of their data to the AT&T-21STATE 911 DBMS.

Where it chooses to purchase E911 service from AT&T-21STATE, CA will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-21STATE E911 SR location.
Where it chooses to purchase E911 service from AT&T-21STATE, CA will forward the ANI information of the party calling 911 to the AT&T-21STATE E911 SR.

Facilities and Trunking (for CA's own switches):
CA shall be financially responsible for the transport facilities to each AT&T-21STATE E911 SR that serves the Exchange Areas in which CA is authorized to and will provide Telephone Exchange Service.
CA acknowledges that its End Users in a single local calling scope may be served by different E911 SRs and CA shall be financially responsible for the transport facilities to route 911 calls from its End Users to the proper E911 SR.
Where it chooses to purchase E911 service from AT&T-21STATE, CA shall order a minimum of two (2) one-way outgoing E911 Trunk(s) dedicated for originating 911 Emergency Service calls for each default PSAP or default ESN to interconnect **from CA's switch** to each appropriate AT&T-21STATE E911 SR, where applicable. Where Signaling System 7 (SS7) connectivity is available and required by the applicable E911 Customer, the Parties agree to implement Common Channel Signaling (CCS) trunking rather than Multi-Frequency (MF) trunking.
Where it chooses to purchase E911 service from AT&T-21STATE, CA is responsible for ordering a separate E911 Trunk group from AT&T-21STATE for each county, default PSAP or other geographic area that the CA serves if the E911 Customer for such county or geographic area has a specified varying default routing condition. Where PSAPs do not have the technical capability to receive 10-digit ANI, E911 traffic must be transmitted over a separate trunk group specific to the underlying technology. CA will have administrative control for the purpose of issuing ASRs on this trunk group. Where the parties utilize SS7 signaling and the E911 network has the technology available, only one (1) E911 Trunk group shall be established to handle multiple NPAs within the local Exchange Area or LATA. If the E911 network does not have the appropriate technology available, a SS7 trunk group shall be established per NPA in the local Exchange Area or LATA. In addition, 911 traffic originating in one (1) NPA must be transmitted over a separate 911 Trunk group from 911 traffic originating in any other NPA 911.
Where it chooses to purchase E911 service from AT&T-21STATE, CA shall maintain facility transport capacity sufficient to route 911 traffic over trunks dedicated to 911 Interconnection between the CA switch and the AT&T-21STATE E911 SR.
Where it chooses to purchase E911 service from AT&T-21STATE, CA shall order sufficient trunking to route CA's originating 911 calls to the designated AT&T-21STATE E911 SR.

Diverse (i.e., separate) 911 facilities are highly recommended and may be required by the Commission or E911 Customer. If required by the E911 Customer, diverse 911 Trunks shall be ordered in the same fashion as the primary 911 Trunks. CA is responsible for initiating trunking and facility orders for diverse routes for 911 Interconnection.

CA is responsible for determining the proper quantity of trunks and transport facilities from its switch (es) to interconnect with the AT&T-21STATE E911 SR.
CA shall engineer its 911 Trunks to attain a minimum P.01 grade of service as measured using the time consistent average busy season busy hour twenty (20) day averaged loads applied to industry standard Neal-Wilkinson Trunk Group Capacity algorithms (using Medium day-to-day Variation and 1.0 Peakedness factor), or such other minimum grade of service as required by Applicable Law.
CA shall monitor its 911 Trunks for the purpose of determining originating network traffic volumes. If CA's traffic study indicates that additional 911 Trunks are needed to meet the current level of 911 call volumes, CA shall provision additional 911 Trunks for Interconnection with AT&T-21STATE **or an alternative E911 provider.**
CA is responsible for the isolation, coordination and restoration of all 911 facility and trunking maintenance problems from CA's demarcation (for example, collocation) to the AT&T-21STATE E911 SR(s). CA is responsible for advising AT&T-21STATE of the 911 Trunk identification and the fact that the trunks are dedicated for 911 traffic when notifying AT&T-21STATE of a failure or outage. The Parties agree to work cooperatively and expeditiously to resolve any 911 outage. AT&T-21STATE will refer network trouble to CA if no defect is found in AT&T-21STATE's 911 network. The Parties agree that 911 network problem resolution will be managed expeditiously at all times.
CA **shall comply at all times with its regulatory obligation to provide working E911 service to its End Users whether or not such service is purchased from AT&T-21STATE.**
Where required, CA will comply with Commission directives regarding 911 facility and/or 911 Trunking requirements.
Database:
Where it chooses to purchase E911 service from AT&T-21STATE, once the 911 Interconnection between CA and all appropriate AT&T-21STATE E911 SR(s) has been established and tested, CA or its representatives shall be responsible for providing CA's End User 911 Records to AT&T-21STATE for inclusion in AT&T-21STATE's DBMS on a timely basis.
Where it chooses to purchase E911 service from AT&T-21STATE, CA or its agent shall provide initial and ongoing updates of CA's End User 911 Records that are Master Street Address Guide (MSAG) valid in electronic format based upon established NENA standards. CA shall adopt use of a Company/NENA ID on all CA End User 911 Records in accordance with NENA standards. The Company ID is used to identify the carrier of record in facility configurations.

Where it chooses to purchase E911 service from AT&T-22STATE, CA is responsible for providing AT&T-21STATE updates to the E911 database; in addition, CA is responsible for correcting any errors that may occur during the entry of their data to the AT&T-21STATE 911 DBMS.

CA comments:
CA has simply added the bolded provisions to reflect that CA may purchase E911 services from the E911 provider or carrier of its choice for CA's own network and switches.

Issue #47: Correct AT&T's incorrect definition of Entrance Facilities

Appears: ICC, 2.9

AT&T proposed language:

> "Entrance Facilities" are the transmission facilities (typically wires or cables) that connect CA's network with AT&T-21STATE's network for the mutual exchange of traffic. These Entrance Facilities connect CA's network from CA's Switch or point of presence ("POP") within the LATA to the AT&T-21STATE Serving Wire Center of such Switch or POP for the transmission of telephone exchange service and/or exchange access service.

CA proposed language:

> "Entrance Facilities" are the transmission facilities (typically wires or cables) that connect CA's network with AT&T-21STATE's network for the mutual exchange of traffic. These Entrance Facilities connect CA's network from CA's Switch or point of presence ("POP") within the LATA to the AT&T-21STATE Serving Wire Center of such Switch or POP for the transmission of telephone exchange service and/or exchange access service. **Entrance Facilities do not apply to interconnection arrangements where the mutually-agreed Point of Interconnection ("POI") is within an AT&T-21STATE Serving Wire Center, and CA provides its own transport on its side of that POI.**

CA comments:

AT&T's definition of entrance facilities implies that AT&T could charge for entrance facilities regardless of where the POI is located, when it should only be entitled to charge for actual entrance facilities where the POI is not within a AT&T central office.

Issue #48: AT&T's archaic, unnecessary FX language would prohibit use of VoIP

Appears: ICC 3.2.3

AT&T proposed language:

> For each NXX code used by either Party, the Party that owns the NXX (or pooled code block) must maintain network facilities (whether owned or leased) used to actively provide, in part, local Telecommunications Service in the geographic area assigned to such NXX code. If either Party uses its NXX Code to provide Foreign Exchange (FX) service to its customers outside of the geographic area assigned to such code, that Party shall be solely responsible to transport traffic between its Foreign Exchange service customers and such code's geographic area.

CA proposed language:

> None. Delete.

CA comments:

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 CA 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 internet connection and the VoIP call is transported from the CA'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.

Issue #49: If required to establish an additional POI, CA may use UNE IDT to reach that POI

Appears: ICC, 3.2.4.6

AT&T proposed language:

> The additional POI(s) will be established within ninety (90) calendar days of notification that the threshold has been met.

CA proposed language:

> The additional POI(s) will be established within ninety (90) calendar days of notification that the threshold has been met. CA may lease facilities from AT&T as Dedicated Transport - Interoffice Channel from an existing POI to the additional POI for this purpose.

CA comments:

If CA has an existing POI at a AT&T Tandem and AT&T requires CA to establish a new, secondary POI at another location due to excessive transit 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 UNE rates and need not require special access circuits for local interconnection.

Issue #50: Clarify that CA is only responsible for the cost of trunks on its side of the POI

Appears: ICC, 3.2.6

AT&T proposed language:

> CLEC is solely responsible, including financially, for the facilities that carry Operator Services/Directory Assistance ("OS/DA"), E911, Mass Calling, Third Party and Meet Point Trunk Groups

CA proposed language:

> CA is solely responsible, including financially, for the facilities that carry Operator Services/Directory Assistance ("OS/DA"), E911, Mass Calling, Third Party and Meet Point Trunk Groups **on its side of the Point of Interconnection ("POI").**

CA comments:

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 place the entire burden of interconnection cost on CA instead, which conflicts with the Act's parity requirements.

Issue #51: A CA collocation in a AT&T Central Office can be designated as the POI

Appears: ICC, 3.4.4

AT&T proposed language:

> The Parties recognize that a facility handoff point must be agreed upon to establish the demarcation point for maintenance and provisioning responsibilities for each Party on its side of the POI.

CA proposed language:

> The Parties recognize that a facility handoff point must be agreed upon to establish the demarcation point for maintenance and provisioning responsibilities for each Party on its side of the POI. **If the POI is a collocation arrangement within an AT&T Wire Center, then the demarcation point shall be that collocation.**

CA comments:

CA believes that it is clear that the Act intended for each party to bear its own costs on its side of the POI. AT&T has recently begun to use language such as its proposed language here to attempt to subvert that intention and to create a revenue opportunity for AT&T at the expense of CA. CA has direct knowledge of situations where the parties agree that the POI is at a AT&T wire center, the CA orders, pays for, and obtains a collocation in that wire center, and then AT&T claims that the POI is actually in some other area of the building and that CA must pay AT&T for circuits between the alleged POI and the CA'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. CA believes that if it extends its network all the way into the AT&T wire center where the POI is located, the least AT&T can do is run a wire down the hallway to CA's collocation at its own expense. It is worthy of note that CA is not permitted to present interconnection circuits to AT&T anywhere else in the wire center other than a collocation. AT&T's language would make it impossible for CA to actually meet AT&T at the POI.

Issue #52a: CA should be entitled to use a tandem provider of its choice for its own network

First Instance Appears: ICC, 4.1.6

AT&T proposed language:

None

CA proposed language:

Nothing herein shall prohibit CA from utilizing third-party tandem providers to exchange call traffic with any carrier not directly connected to CA's network.

CA comments:

CA desires to clarify that it is not required to use AT&T's tandem to exchange call traffic with carriers and may instead use any third-party tandem provider at CA's option. AT&T failed to respond to CA on this issue.

Issue #52b: CA should be entitled to use a tandem provider of its choice for its own network

Second Instance Appears: ICC, 4.3.1

AT&T proposed language:

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

CA proposed language:

> When CA Offers Service in a Local Exchange Area or LATA, the following trunk groups described in this Section 4.3 shall be used to transport traffic between CA End Users and AT&T-21STATE End Users**. If a third-party tandem connects the switches operated by both parties, then either party shall be entitled to designate such third party tandem as the Local Homing Tandem for its terminating traffic between the switches which are connected by the third party tandem, and neither party shall be obligated to pay the other for tandem switching provided by the third party.**

CA comments:

Although there are several third-party tandem providers currently operating throughout Florida, AT&T seeks to maintain its monopoly on tandem services by use of this proposed language. CA's language would introduce parity between the parties; CA would still be required to send calls to AT&T's network using the tandem specified by AT&T. CA's language, however, would permit it to select a third party tandem to be used by other carriers to reach CA's own network rather than CA being required to use only AT&T's tandem. CA believes that AT&T has not been and should not be granted a monopoly for local tandem service, which is exactly what AT&T's proposed language would do.

Issue #53: AT&T may not mandate CA to purchase unnecessary HVCI trunks

Appears: ICC, 4.3.9

AT&T proposed language:

High Volume Call In (HVCI)/Mass Calling (Choke) Trunk Group - AT&T-21STATE:

CA may establish a dedicated trunk group to the designated Public Response HVCI/Mass Calling Network Access Tandem in each Serving Area. This trunk group shall be one-way outgoing only and shall utilize MF signaling. As the HVCI/Mass Calling trunk group is designed to block all excessive attempts toward HVCI/Mass Calling NXXs, it is necessarily exempt from the one percent (1%) blocking standard described elsewhere in this Attachment. CA will have administrative control for the purpose of issuing ASRs on this one-way trunk group. The Parties will not exchange live traffic until successful testing is completed by both Parties.

CA proposed language:

None

CA comments:

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 trunks, including several that CA is personally familiar with in Florida. This provision is anti-competitive 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. CA should have total control of which trunks it will order to interconnect its own switches to others. AT&T did not respond to CA on this issue.

Issue #54: CA should be entitled to VoIP/VuIP Interconnection if AT&T offers it to others

Appears: ICC, 4.3.11

AT&T proposed language:

None

CA proposed language:

SIP Voice-over-IP/Voice-using-IP Trunk Groups. In the event that AT&T-21STATE offers, installs, or provides any interconnection trunking using SIP Voice-over-IP or Voice-using-IP to any entity including its affiliates, CA shall be entitled to order the same type of interconnection trunking in the same areas and under the same terms where it has been offered, installed or provided for others under this agreement. The parties may mutually agree to complete a contract amendment to codify additional terms and conditions, but such an amendment shall not be required in order for CA to obtain the service under non-discriminatory terms and pricing. The parties recognize that Voice-over-IP connects two network over the public internet, and is not the same as Voice-using IP which connects two networks using private non-internet peering. CA shall be entitled to select either of these options, to the extent technically feasible or provided to another party by AT&T-21STATE. In the case of Voice-using-IP, AT&T-21STATE shall provide non-discriminatory access for CA to interconnect its packet network to AT&T-21STATE's packet network at any technically feasible point chosen by CA for the purpose of interconnection only, utilizing technical means to ensure quality of service and security.

CA comments:

CA believes that if 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 CAs interconnected using legacy technology because legacy TDM trunks are less scalable and more expensive for the CA. 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.

Issue #55: AT&T may not require CA to purchase interLATA trunks from AT&T

Appears: ICC, 6.11.1

AT&T proposed language:

> Where a CLEC originates or terminates its own End User InterLATA Traffic not subject to MPB, the CLEC **must** purchase feature group access service from **AT&T-21STATE**'s state or federal access tariffs, whichever is applicable, to carry such InterLATA Traffic.

CA proposed language:

> Where a CLEC originates or terminates its own End User InterLATA Traffic not subject to MPB, the CLEC **may, at its sole option,** purchase feature group access service from **AT&T-21STATE**'s state or federal access tariffs, whichever is applicable, to carry such InterLATA Traffic.

CA comments:

Most CAs currently use third-party tandem providers to transit interLATA traffic to other carriers, rather than using ILEC tandems. AT&T's language would, once again, force CA to order unnecessary services from AT&T. CA should have complete control over its own network, switches and call routing.

Issue #56: AT&T should not be able to redefine terms of this Agreement in its tariff

Appears: ICC, 6.13.3.1

AT&T proposed language:

> Each Party shall report to the other the projected PIU factors, including but not limited to PIU associated with facilities (PIUE) and Terminating PIU (TPIU) factors. The application of the PIU will determine the respective interstate traffic percentages to be billed at AT&T SOUTHEAST REGION 9-STATE's FCC No. 1 Tariff rates. All jurisdictional report requirements, rules and regulations for IXCs specified in AT&T SOUTHEAST REGION 9-STATE's interstate and/or intrastate access services tariff(s) will apply to CA. After interstate and intrastate traffic percentages have been determined by use of PIU procedures, the PLU and PLF factors will be used for application and billing of local traffic and facilities. The intrastate toll traffic shall be billed at AT&T SOUTHEAST REGION 9-STATE's intrastate access services tariff rates. Each Party shall update its PIUs on the first of January, April, July and October of each year and shall send it to the other Party to be received no later than thirty (30) calendar days after the first of each such month to be effective the first bill period the following month, respectively, for all services showing the percentages of use for the past three (3) months ending the last day of December, March, June and September. Additional requirements associated with PIU calculations and reporting shall be as set forth in AT&T SOUTHEAST REGION 9-STATE's Jurisdictional Factors Reporting Guide.

CA proposed language:

> Each Party shall report to the other the projected PIU factors, including but not limited to PIU associated with facilities (PIUE) and Terminating PIU (TPIU) factors. The application of the PIU will determine the respective interstate traffic percentages to be billed at AT&T SOUTHEAST REGION 9-STATE's FCC No. 1 Tariff rates. After interstate and intrastate traffic percentages have been determined by use of PIU procedures, the PLU and PLF factors will be used for application and billing of local traffic and facilities. The intrastate toll traffic shall be billed at AT&T SOUTHEAST REGION 9-STATE's intrastate access services tariff rates. Each Party shall update its PIUs on the first of January, April, July and October of each year and shall send it to the other Party to be received no later than thirty (30) calendar days after the first of each such month to be effective the first bill period the following month, respectively, for all services showing the percentages of use for the past three (3) months ending the last day of December, March, June and September. Additional requirements associated with PIU calculations and reporting shall be as set forth in AT&T SOUTHEAST REGION 9-STATE's Jurisdictional Factors Reporting Guide. **If a party fails to report any previously-reported factors to the other party, the billing party shall assume that the previously-reported factors are still valid and applicable and use them.**

CA comments:

CA has removed AT&T's reference that CA must comply with rules and regulations in its tariff which are arbitrarily and solely determined, and subject to change, by AT&T. CA also

added one sentence, to bring language into compliance with standard practice regarding the use of previously-submitted factors when new factors are not submitted by a party.

Issue #57: Each party should use the most recent PLU/PLF factors submitted by the other

Appears: 6.13.3.2 – 6.13.3.3

AT&T proposed language:

Each Party shall report to the other a PLU factor. The application of the PLU will determine the amount of local or ISP-Bound minutes to be billed to the other Party. Each Party shall update its PLU on the first of January, April, July and October of each year and shall send it to the other Party to be received no later than thirty (30) calendar days after the first of each such month to be effective the first bill period the following month, respectively, based on local and ISP-Bound usage for the past three (3) months ending the last day of December, March, June and September, respectively. Requirements associated with PLU calculation and reporting shall be as set forth in AT&T SOUTHEAST REGION 9-STATE's Jurisdictional Factors Reporting Guide.

Each Party shall report to the other a PLF factor. The application of the PLF will determine the portion of switched dedicated transport to be billed per the local jurisdiction rates. The PLF shall be applied to multiplexing, local channel and interoffice channel switched dedicated transport utilized in the provision of Local Interconnection Trunks. Each Party shall update its PLF on the first of January, April, July and October of the year and shall send it to the other Party to be received no later than thirty (30) calendar days after the first of each such month to be effective the first bill period the following month, respectively. Requirements associated with PLF calculation and reporting shall be as set forth in AT&T SOUTHEAST REGION 9-STATE's Jurisdictional Factors Reporting Guide.

CA proposed language:

Each Party shall report to the other a PLU factor. The application of the PLU will determine the amount of local or ISP-Bound minutes to be billed to the other Party. Each Party shall update its PLU on the first of January, April, July and October of each year and shall send it to the other Party to be received no later than thirty (30) calendar days after the first of each such month to be effective the first bill period the following month, respectively, based on local and ISP-Bound usage for the past three (3) months ending the last day of December, March, June and September, respectively. **If a party fails to report any previously-reported factors to the other party, the billing party shall assume that the previously-reported factors are still valid and applicable and use them.** Requirements associated with PLU calculation and reporting shall be as set forth in AT&T SOUTHEAST REGION 9-STATE's Jurisdictional Factors Reporting Guide.

Each Party shall report to the other a PLF factor. The application of the PLF will determine the portion of switched dedicated transport to be billed per the local jurisdiction rates. The PLF shall be applied to multiplexing, local channel and interoffice channel switched dedicated transport utilized in the provision of Local Interconnection Trunks. Each Party shall update its PLF on the first of January, April, July and October of the year and shall send it to the other Party to be received no later than thirty (30) calendar days after the first of each such month to be effective the first bill period the following month, respectively. **If a party fails to report any previously-reported factors to the other party, the billing party shall**

assume that the previously-reported factors are still valid and applicable and use them. Requirements associated with PLF calculation and reporting shall be as set forth in AT&T SOUTHEAST REGION 9-STATE's Jurisdictional Factors Reporting Guide.

CA comments:

Revised to bring language into compliance with standard practice regarding the use of previously-submitted factors when new factors are not submitted by a party.

Issue #58: AT&T should not conduct costly audits at CA expense over minor discrepancy

Appears: ICC, 6.13.3.5

AT&T proposed language:

> On thirty (30) calendar days written Notice, CLEC must provide AT&T SOUTHEAST REGION 9-STATE the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic. CLEC shall retain Records of call detail for a minimum of nine (9) months from which the PLU, PLF and/or PIU can be ascertained. The audit shall be conducted during normal business hours at an office designated by CLEC. Audit requests shall not be submitted more frequently than one (1) time per calendar year. Audits shall be performed by an independent auditor chosen by AT&T SOUTHEAST REGION 9-STATE. The audited factor (PLF, PLU and/or PIU) shall be adjusted based upon the audit results and shall apply to the usage for the audited period through the time period when the audit is completed, to the usage for the quarter prior to the audit period and to the usage for the two (2) quarters following the completion of the audit. If, as a result of an audit, CLEC is found to have overstated the PLF, PLU and/or PIU by five percentage points (5%), CLEC shall reimburse AT&T SOUTHEAST REGION 9-STATE for the cost of the audit.

CA proposed language:

> On thirty (30) calendar days written Notice, CA must provide AT&T SOUTHEAST REGION 9-STATE the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic. CA shall retain Records of call detail for a minimum of nine (9) months from which the PLU, PLF and/or PIU can be ascertained. The audit shall be conducted during normal business hours at an office designated by CA. Audit requests shall not be submitted more frequently than one (1) time per calendar year. Audits shall be performed by an independent auditor chosen by AT&T SOUTHEAST REGION 9-STATE. The audited factor (PLF, PLU and/or PIU) shall be adjusted based upon the audit results and shall apply to the usage for the audited period through the time period when the audit is completed, to the usage for the quarter prior to the audit period and to the usage for the two (2) quarters following the completion of the audit. If, as a result of an audit, CA is found to have overstated the PLF, PLU and/or PIU **which has resulted in underbilling to CA of $2500.00 per month or more**, **CA** shall reimburse AT&T SOUTHEAST REGION 9-STATE for the cost of the audit.

CA comments:

This revision is necessary because the cost of an audit is not capped, and could exceed 100,000.00. For a small CA, a 5% discrepancy is not only common but could amount to as little as 100.00. This could be used by AT&T as a very effective tool to bankrupt its competition, if it forced a CA to pay for a 100,000.00 audit to reveal 100.00 in underbilling. CA believes that its language strikes a better balance, holding CA accountable for mis-statements but not permitting AT&T to artificially drive up CA's costs.

Issue #59: Interest charges for unpaid amounts are not added to Late Payment Charges

Appears: ICC, 6.13.7

AT&T proposed language:

> For billing disputes arising from Intercarrier Compensation charges, the Party challenging the disputed amounts (the "Non-Paying Party") may withhold payment for the amounts in dispute (the "Disputed Amounts") from the Party rendering the bill (the "Billing Party") only for so long as the dispute remains pending pursuant to the dispute resolution procedures of the General Terms and Conditions. Late payment charges and interest will continue to accrue on the Disputed Amounts while the dispute remains pending. The Non-Paying Party need not pay late payment charges or interest on the Disputed Amounts for so long as the dispute remains pending pursuant to the dispute resolution procedures of the General Terms and Conditions. Upon resolution of the dispute pertaining to the Disputed Amounts in accordance with the dispute resolution provisions of the General Terms and Conditions: (1) the Non-Paying Party will remit the appropriate Disputed Amounts to the Billing Party, together with all related interest and late payment charges, to the Billing Party within ten (10) business days of the resolution of the dispute, if (and to the extent) the dispute is resolved in favor of the Billing Party; and/or (2) the Billing Party will render all appropriate credits and adjustments to the Non-Paying Party for the Disputed Amounts, together with all appropriate interest and late payment charges, within ten (10) business days of the resolution of the dispute, if (and to the extent) the dispute is resolved in favor of the Non-Paying Party.

CA proposed language:

> For billing disputes arising from Intercarrier Compensation charges, the Party challenging the disputed amounts (the "Non-Paying Party") may withhold payment for the amounts in dispute (the "Disputed Amounts") from the Party rendering the bill (the "Billing Party") only for so long as the dispute remains pending pursuant to the dispute resolution procedures of the General Terms and Conditions. Late payment charges will continue to accrue on the Disputed Amounts while the dispute remains pending. The Non-Paying Party need not pay late payment charges on the Disputed Amounts for so long as the dispute remains pending pursuant to the dispute resolution procedures of the General Terms and Conditions. Upon resolution of the dispute pertaining to the Disputed Amounts in accordance with the dispute resolution provisions of the General Terms and Conditions: (1) the Non-Paying Party will remit the appropriate Disputed Amounts to the Billing Party, together with all related late payment charges, to the Billing Party within **thirty (30)** business days of the resolution of the dispute, if (and to the extent) the dispute is resolved in favor of the Billing Party; and/or (2) the Billing Party will render all appropriate credits and adjustments to the Non-Paying Party for the Disputed Amounts, together with all appropriate late payment charges, within **thirty (30)** business days of the resolution of the dispute, if (and to the extent) the dispute is resolved in favor of the Non-Paying Party.

CA comments:

CA believes that late payment charges and interest are mutually exclusive and may not be combined. CA has also revised the true-up timeframe from 10 to 30 days, as CA may need time to secure financing to make payment of such amounts if it is found responsible for them. AT&T did not respond to CA on this issue.

Issue #60: HDSL loops are distinct from HDSL-capable loops

Appears: UNEs, 16.6

AT&T proposed language:

None.

CA proposed language:

The parties agree that an HDSL-capable loop is distinct from an HDSL loop. An HDSL loop is a conditioned loop, includes electronics at each end, and may use intermediate repeaters to reach extended distances. An HDSL-capable loop is simply a copper loop without electronics capable of carrying HDSL signals at distances of up to 11kft. This distinction is important because HDSL loops are subject to TRRO Wire Center Designation restrictions, while HDSL-capable loops are not. CA shall not be foreclosed from ordering HDSL-capable loops in Tier 1 Wire Centers, while the parties agree that CA is not entitled to HDSL loops in Tier 1 Wire Centers under current TRRO rules. CA shall not be required to use UCL instead of HDSL-capable loops in cases where HDSL-capable loops exist.

CA comments:

CA desires to clarify this point in the Agreement because AT&T has recently conflated the terms “HDSL loop” and “HDSL-capable loop” in order to deny CAs access to HDSL-capable loops in Tier 1 Wire Centers.

Issue #61: Customers need not switch service from CA to AT&T to convey a number

Appears: LNP, 3.1.4

AT&T proposed language:

> When a ported telephone number becomes vacant (e.g., the telephone number is no longer in service with the original End User), the ported telephone number will be released back to the carrier owning the switch (after aging if any) in which the telephone number's NXX-X is native.

CA proposed language:

> When a ported telephone number becomes vacant (e.g., the telephone number is no longer **assigned to an End User**), the ported telephone number will be released back to the carrier owning the switch (after aging if any) in which the telephone number's NXX-X is native.

CA comments:

CA objects to AT&T's language, because it seems to require that any time an original end user no longer owns a number, it 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 must it be returned.

Issue #62: AT&T may not impose arbitrary restrictions upon number portability
Appears: LNP, 3.2

AT&T proposed language:

Limitations of Service for LNP:

Telephone numbers can be ported only within the Toll Message Rate Centers (TMRCs) as approved by the Commissions. "Porting within Rate Centers" refers to a limitation of changing service providers while the physical location of the End User remains with the wireline footprint of the Rate Center. If the End User changes his, her or its physical location from one Rate Center to another, the End User may not retain his, her or its telephone number (which is associated with the End User's previous Rate Center) as a basic network (non-FX) offering. An End User may retain his, her or its telephone number when moving from one Rate Center to another by the use of a tariff FX or Remote Call Forwarding offering from the new service provider.Telephone numbers of the following types shall not be ported:

AT&T-21STATE Official Communications Services (OCS) NXXs; 555, 950, 956, 976 and 900 numbers;

N11 numbers (e.g., 411 and 911);

Toll-free service numbers (e.g., 800, 888, 877 and 866);

and Disconnected or unassigned numbers.

Telephone numbers with NXXs dedicated to choke/High Volume Call-In (HVCI) networks are not portable via LRN. Choke numbers will be ported as described in Section 4.4.7.2 below of this Attachment.

CA proposed language:

Limitations of Service for LNP:

Telephone numbers of the following types shall not be ported:

AT&T-21STATE Official Communications Services (OCS) NXXs;

555, 950, 956, 976 and 900 numbers;

N11 numbers (e.g., 411 and 911);

Disconnected or unassigned numbers.

Telephone numbers with NXXs dedicated to choke/High Volume Call-In (HVCI) networks are not portable via LRN. Choke numbers will be ported as described in Section 4.4.7.2 below of this Attachment.

CA comments:

CA believes that it is well settled that subscribers may port numbers regardless of ratecenter designation as long as the gaining provider's network can support the service. CA agrees that toll-free portability is not controlled by this Agreement since it is not local service, but CA does not waive its right to do so.

Issue #63: Both parties must obtain authorization before submitting CSR or LSR requests

Appears: LNP, 4.3.3

AT&T proposed language:

None

CA proposed language:

The parties agree that neither party shall submit an LNP LSR or Customer Service Record (CSR) request to the other unless the ordering party has first obtained written or verbally recorded authorization from the End User authorizing such activity. The ordering party shall be reasonably required to produce such authorization upon request by the other party in the case of any customer dispute involving the authorization, and in such cases the parties agree to cooperate to timely resolve the dispute.

CA comments:

CA believes that its language is consistent with current FCC regulations, and CA intends for the Agreement to require AT&T's compliance along with cooperation between the parties in the case of an LNP dispute. CA is aware of incidents where AT&T has submitted CSR/LSR requests to CAs without first obtaining written permission, sometimes resulting in the unauthorized porting of numbers. AT&T has then made a bad situation worse by requiring CA to submit an LSR to port the number back from AT&T, and imposing a substantial delay before service can be restored to CA's customer. CA desires that the parties be required instead to timely cooperate to resolve such disputes.

Issue #64: Neither party may charge any fee to the other to obtain Local Number Portability

Appears: LNP, 5.1.1

AT&T proposed language:

Pricing for LNP:

With the exception of lawful query charges, the Parties shall not charge each other for the porting of telephone numbers as a means for the other to recover the costs associated with LNP.

CA proposed language:

Pricing for LNP:

With the exception of lawful query charges, the Parties shall not charge each other for the porting of telephone numbers**, including ordering charges or any other charge imposed as a condition of obtaining LNP.**

CA comments:

CA believes that AT&T has carefully crafted its language to prohibit the parties from charging for LNP service, but that AT&T intends to actually charge other fees such as ordering charges, OSS charges, and the like. AT&T currently requires CAs to submit LSRs in its OSS systems as a condition to obtaining LNP, and then charges CAs for those orders. CA desires to clarify that no charges may be imposed as a condition of obtaining LNP. CA believes that its language is consistent with current FCC rules regarding LNP. CA also notes that CA raised this issue related to provision OSS 5.5 in this agreement and in that instance AT&T agreed to the same change requested here. CA is not clear why AT&T rejected one and agreed to the other.

Issue #65: AT&T must provide reasonable means to promptly address ordering issues

Appears: OSS, 3.9

AT&T proposed language:

> The technical support function of electronic OSS interfaces can be accessed via the AT&T CLEC Online website. CLEC will also provide a single point of contact for technical issues related to CLEC's use of AT&T-21STATE's electronic interfaces.

CA proposed language:

> The technical support function of electronic OSS interfaces can be accessed via the AT&T CLEC Online website. CA will also provide a single point of contact for technical issues related to CA's use of AT&T-21STATE's electronic interfaces. **AT&T-21STATE shall provide to CA a reasonable means of timely resolving OSS and/or OSS ordering issues, including prompt resolution of ambiguous rejects, jeopardies or errors on orders.**

CA comments:

CA believes that AT&T has a long history of ambiguous rejects, errors and jeopardy notices for CLEC orders, and that these are often used as a means to delay CLECs' ability to timely deliver service. This causes a marked disparity in the customer's perception of the abilities of AT&T and a CLEC, through no fault of the CLEC's. CLECs are often told by AT&T personnel that AT&T doesn't know why "the system" rejected an order, and CLEC is left with no means to resolve an issue which almost always turns out to be an AT&T OSS malfunction. However, this process often results in the loss of CLEC's customer. CLEC desires that AT&T be required by this Agreement to provide timely resolution in such cases. Failure to do so would leave CLEC with only the dispute resolution procedures as a remedy, which a CLEC customer generally will not wait for.

Issue #66: Neither party may prolong outages of the other party by avoiding direct contact

Appears: OSS, 3.14

AT&T proposed language:

> The Parties agree to provide one another with toll-free contact numbers for the purpose of addressing ordering, provisioning and maintenance of services issues. Contact numbers for maintenance/repair of services shall be staffed twenty-four (24) hours per day, seven (7) days per week.

CA proposed language:

> The Parties agree to provide one another with toll-free contact numbers for the purpose of addressing ordering, provisioning and maintenance of services issues. Contact numbers for maintenance/repair of services shall be staffed twenty-four (24) hours per day, seven (7) days per week. **Each party shall be required to provide a human agent to the other party for telephone calls to report an outage, open a repair ticket in inquire about a repair ticket previously opened.**

CA comments:

AT&T has a well-established history of making it nearly impossible for CLECs to obtain repair during even the most critical of outages. One such mechanism that AT&T regularly employs is the use of robotic telephone answering systems for CLEC repair calls, which make it virtually impossible for CLEC repair staff to reach a live AT&T agent or in fact to accomplish anything at all. Often the AT&T robot will reject CLEC telephone, account or circuit numbers even if they are valid and after numerous attempts. This behavior by AT&T substantially lengthens CLEC outages large and small, and could be easily remedied if both parties were required to provide a live human agent when the other party has a network outage which must be cooperatively resolved. Regardless of which party is at fault, the CLEC's reputation suffers more during such outages due to its smaller size and market share. Therefore, CA believes that its language is reasonable and necessary in order to best provide parity.

Issue #67a: AT&T should not charge CA for orders that AT&T caused to be inaccurate
First Instance Appears: OSS, 3.15.4

AT&T proposed language:

> By using electronic interfaces to access OSS functions, CLEC agrees to perform accurate and correct ordering of CLEC Services. CLEC is also responsible for all actions of its employees using any of AT&T-21STATE's OSS. As such, CLEC agrees to accept and pay all reasonable costs or expenses, including labor costs, incurred by AT&T-21STATE caused by any and all inaccurate ordering or usage of the OSS, if such costs are not already recovered through other charges assessed by AT&T-21STATE to CLEC. In addition, CLEC agrees to indemnify and hold AT&T-21STATE harmless against any claim made by an End User of CLEC or Third Parties against AT&T-21STATE caused by or related to CLEC's use of any AT&T-21STATE OSS.

CA proposed language:

> By using electronic interfaces to access OSS functions, CA agrees to perform accurate and correct ordering of ICA Services. CA is also responsible for all actions of its employees using any of AT&T-21STATE's OSS. As such, CA agrees to accept and pay all reasonable costs or expenses, including labor costs, incurred by AT&T-21STATE caused by any and all inaccurate ordering or usage of the OSS, if such costs are not already recovered through other charges assessed by AT&T-21STATE to CA. **AT&T-21STATE shall not be entitled to recover any costs or charges related to inaccurate orders submitted by CA where inaccuracies or errors were caused by either the incorrect advice of an employee of AT&T-21STATE or by the failure or refusal of AT&T-21STATE to reasonably respond to CA's request for assistance with submitting an order in the AT&T-21STATE OSS.** In addition, CA agrees to indemnify and hold AT&T-21STATE harmless against any claim made by an End User of CA or Third Parties against AT&T-21STATE caused by or related to CA's use of any AT&T-21STATE OSS.

CA comments:

CA believes that its addition is reasonable because many CLEC ordering issues are caused by errors in or problems with AT&T's OSS. Very often, CLECs are told by AT&T employees in response to OSS issues "I don't know why it did that" or "try this instead" as if AT&T's OSS is something beyond even its own employees' understanding. CA believes that it is reasonable to require AT&T to support its own OSS, and that AT&T should be responsible for errors caused by the advice of its employees or the inability of its employees to explain how to clear a particular problem with its OSS.

Issue #67b: AT&T should not charge CA for orders that AT&T caused to be inaccurate
Second Instance Appears: OSS, 6.5.1.1

AT&T proposed language:

> Notwithstanding the foregoing, if CA places an LSR based upon AT&T-21STATE's loop makeup information, and such information is inaccurate resulting in the inability of AT&T-21STATE to provision the ICA Services requested and another spare compatible facility cannot be found with the transmission characteristics of the ICA Services originally requested, cancellation charges shall not apply. Where CA places a single LSR for multiple ICA Services based upon loop makeup information, and information as to some, but not all, of the ICA Services is inaccurate, if AT&T-21STATE cannot provision the ICA Services that were the subject of the inaccurate loop makeup information, CA may cancel its request for those ICA Services without incurring cancellation charges. In such instance, should CA elect to cancel the entire LSR, cancellation charges shall apply to those ICA Services that were not the subject of inaccurate loop makeup

CA proposed language:

> Notwithstanding the foregoing, if CA places an LSR based upon AT&T-21STATE's loop makeup information, and such information is inaccurate resulting in the inability of AT&T-21STATE to provision the ICA Services requested and another spare compatible facility cannot be found with the transmission characteristics of the ICA Services originally requested, cancellation charges shall not apply. Where CA places a single LSR for multiple ICA Services based upon loop makeup information, and information as to some, but not all, of the ICA Services is inaccurate, if AT&T-21STATE cannot provision the ICA Services that were the subject of the inaccurate loop makeup information, CA may cancel **all or part of its request for those ICA Services without incurring any charges for the cancelled portion.**

CA comments:

CA believes its revision is reasonable; CA should not be required to pay for any order placed due to incorrect information provided by AT&T if CA is unable to obtain the services as a result of AT&T's error.

Issue #68: CA may set its own FOC policy for its network, not dictated by AT&T

Appears: OSS, 5.4

AT&T proposed language:

> AT&T-22STATE shall return a Firm Order Confirmation (FOC) in accordance with the applicable performance intervals. CLEC shall provide to AT&T-22STATE an FOC per the guidelines located on AT&T's CLEC Online website

CA proposed language:

> AT&T-22STATE shall return a Firm Order Confirmation (FOC) in accordance with the applicable performance intervals.

CA comments:

AT&T's language permits it to not only set and change its own FOC intervals for responding to orders outside of this Agreement, but also attempts to permit AT&T to set CA's FOC intervals for CA's network (generally for LNP orders) which AT&T would allegedly set by updating its website. CA maintains control over its own network, systems, OSS, and business processes. Neither this provision nor anything in this Agreement gives CA control over AT&T's FOC interval, and it is inappropriate for AT&T to attempt to control CA's business practices.

Issue #69a: Both parties should compensate each other for unnecessary field dispatches
First instance appears: OSS, 6.4

AT&T proposed language:

> In the event AT&T-21STATE must dispatch to the End User's location more than once for provisioning of ICA Services due to incorrect or incomplete information provided by CA (e.g., incomplete address, incorrect contact name/number, etc.), AT&T-21STATE will bill CA for each additional dispatch required to provision the circuit due to the incorrect/incomplete information provided. AT&T-21STATE will assess the Maintenance of Service Charge/Trouble Determination Charge/Trouble Location Charge/Time and Material Charges/Additional Labor Charges from the applicable Pricing Schedule, and/or applicable tariffs, price list or service guides.

CA proposed language:

> In the event AT&T-21STATE must dispatch to the End User's location more than once for provisioning of ICA Services due to incorrect or incomplete information provided by CA (e.g., incomplete address, incorrect contact name/number, etc.), AT&T-21STATE will bill CA for each additional dispatch required to provision the circuit due to the incorrect/incomplete information provided. AT&T-21STATE will assess the Maintenance of Service Charge/Trouble Determination Charge/Trouble Location Charge/Time and Material Charges/Additional Labor Charges from the applicable Pricing Schedule, and/or applicable tariffs, price list or service guides.
>
> In the event CA must dispatch to the End User's location to resolve an issue solely caused by AT&T-21STATE's employees, contractors or agents (such as AT&T tampering with CA End User's service, AT&T falsely reporting that service has been properly installed when it has not, or AT&T falsely reporting that service has been repaired when it has not) CA will bill AT&T-21STATE and AT&T-21STATE shall pay for each dispatch required to resolve the problem caused by AT&T. The charge for each such dispatch shall not exceed the then-current AT&T-21STATE Trouble Determination Charge.

CA comments:

AT&T's language did 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 CA that a service is installed or repaired when in fact AT&T has not installed or repaired the service. CA then must dispatch its own technician, 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.

Issue #69b: Both parties should compensate each other for unnecessary field dispatches
Second instance appears: OSS, 7.11

AT&T proposed language:

In the event AT&T-21STATE must dispatch to an End User's location more than once for repair or maintenance of ICLEC Services due to incorrect or incomplete information provided by CLEC (e.g., incomplete address, incorrect contact name/number, etc.), AT&T-21STATE will bill CLEC for each additional dispatch required to repair the circuit due to the incorrect/incomplete information provided. AT&T-21STATE will assess the Maintenance of Service Charge/Trouble Determination Charge/Trouble Location Charge/Time and Material Charges/Additional Labor Charges at the rates set forth in the Pricing Schedule.

CA proposed language:

In the event AT&T-21STATE must dispatch to an End User's location more than once for repair or maintenance of ICA Services due to incorrect or incomplete information provided by CA (e.g., incomplete address, incorrect contact name/number, etc.), AT&T-21STATE will bill CA for each additional dispatch required to repair the circuit due to the incorrect/incomplete information provided. AT&T-21STATE will assess the Maintenance of Service Charge/Trouble Determination Charge/Trouble Location Charge/Time and Material Charges/Additional Labor Charges at the rates set forth in the Pricing Schedule.

In the event CA must dispatch to the End User's location to resolve an issue solely caused by AT&T-21STATE's employees, contractors or agents (such as AT&T tampering with CA End User's ICA Service, AT&T falsely reporting that ICA Service has been properly installed when it has not, or AT&T falsely reporting that ICA Service has been repaired when it has not) CA will bill AT&T-21STATE and AT&T-21STATE shall pay for each dispatch required to resolve the problem caused by AT&T. The charge for each such dispatch shall not exceed the then-current AT&T-21STATE Trouble Determination Charge.

CA comments:

See comments to 69a above.

Issue #70: CA's pole attachments should be held to the same standard as AT&T's

Appears: Structure Access, 16.3.4

AT&T proposed language:

> If Attaching Party's Facilities are in compliance with this Appendix, there will be no charges incurred by the Attaching Party for the periodic or spot inspection. If Attaching Party's Facilities are not in compliance with this Appendix, AT&T-21STATE may charge Attaching Party for the inspection. The Costs of Periodic Inspections will be paid by those Attaching Parties with 5% or greater of their Attachments in violation. The amount paid by the Attaching Party shall be the percentage that their violations bear to the total violations of all Attaching Parties found during the inspection. Should the Attaching Party dispute the result of the inspection, it may seek relief through the Dispute Resolution Process in the General Terms and Conditions of this Agreement.

CA proposed language:

> If Attaching Party's Facilities are in compliance with this Appendix, there will be no charges incurred by the Attaching Party for the periodic or spot inspection. If Attaching Party's Facilities are not in compliance with this Appendix, **AT&T-21STATE** may charge Attaching Party for the inspection. The Costs of Periodic Inspections will be paid by those Attaching Parties with 5% or greater of their Attachments in violation. The amount paid by the Attaching Party shall be the percentage that their violations bear to the total violations of all Attaching Parties found during the inspection. **Attaching Party shall not be deemed to be in violation if AT&T-221STATE's own facilities at the same location bear the same defect as the alleged violation.**

CA comments:

CA believes that there are environmental factors in Florida which may cause pole attachments to not be in compliance with AT&T's guidelines, and often AT&T's own attachments are not in compliance with its guidelines for a variety of reasons. CA believes that its language is appropriate in order to prohibit CA from being unfairly discriminated against; if AT&T's own attachments differ from its published standards in a certain location, then CA should not be penalized if, for the same reasons, its attachment also differs in the same manner. Specifically in Monroe County, there are instances where the parties are now prohibited from installing or maintaining guy wires where they would interfere with mangrove trees. In such a case, both AT&T and CA would be unable to remedy such a "violation" so CA should not be unfairly penalized.

Issue #71: CA is entitled to any UNE offered by AT&T to another CA at same price

Appears: UNE, 1.3

AT&T proposed language:

> The preceding includes without limitation that AT&T-21STATE shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving AT&T-21STATE network elements that do not constitute 251(c)(3) UNEs, or where 251(c)(3) UNEs are not requested for permissible purposes.

CA proposed language:

> The preceding includes without limitation that AT&T-21STATE shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving AT&T-21STATE network elements that do not constitute 251(c)(3) UNEs, or where 251(c)(3) UNEs are not requested for permissible purposes**. If CA orders any UNE or UNE combination for which a price does not exist in this agreement, but for which a price does exist in any then-current Commission-Approved AT&T-21STATE Interconnection Agreement, then CA shall be entitled to obtain that UNE or UNE combination on a non-discriminatory basis under the same rate and terms. The Parties shall execute an amendment within thirty (30) days of request from CA for such an amendment, and the UNE(s) shall be available to CA for ordering within five (5) days after execution of the amendment.**

CA comments:

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.

Issue #72: When denying CA request for UNEs, AT&T must prove they do not exist

Appears: UNE, 1.5

AT&T proposed language:

> Access to 251(c)(3) UNEs is provided under this Agreement over such routes, technologies, and facilities as AT&T-21STATE may elect at its own discretion. AT&T-21STATE will provide access to 251(c)(3) UNEs where technically feasible. Where facilities and equipment are not available, AT&T-21STATE shall not be required to provide 251(c)(3) UNEs.

CA proposed language:

> Access to 251(c)(3) UNEs is provided under this Agreement over such routes, technologies, and facilities as AT&T-21STATE may elect at its own discretion. AT&T-21STATE will provide access to 251(c)(3) UNEs where technically feasible. Where facilities and equipment are not available, AT&T-21STATE shall not be required to provide 251(c)(3) UNEs. **CA shall be entitled to challenge such denials of UNE facilities and AT&T-212STATE shall reasonably prove at no charge to CA that the requested facilities do not exist or are all in use.**

CA comments:

CA believes its language is reasonable to prevent AT&T from arbitrarily and incorrectly denying UNE orders placed by CA, to which CA would have no recourse.

Issue #73: CA does not waive any rights to obtain UNEs now or in the future

Appears: UNE, 1.9

AT&T proposed language:

> The Parties intend that this Attachment contains the sole and exclusive terms and conditions by which CLEC will obtain UNEs from AT&T-21STATE. Accordingly, except as may be specifically permitted by this Attachment, and then only to the extent permitted, CLEC and its Affiliates hereby fully and irrevocably waive any right or ability any of them might have to purchase any UNE (whether on a stand-alone basis, in combination with other UNEs (or otherwise), with a network element possessed by CLEC, or pursuant to Commingling or otherwise) directly from any AT&T-21STATE tariff, to the extent such tariff(s) is/are available, and agree not to so purchase or attempt to so purchase from any such tariff. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of AT&T-21STATE to enforce the foregoing (including if AT&T-21STATE fails to reject or otherwise block orders for, or provides or continues to provide, UNEs, or otherwise, under tariff) shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder. At its option, AT&T-21STATE may either reject any such order submitted under tariff, or without the need for any further contact with or consent from CLEC, AT&T-21STATE may process any such order as being submitted under this Attachment and, further, may convert any element provided under tariff, to this Attachment effective as of the later in time of (i) the Effective Date of this Agreement, or (ii) the submission of the order by CLEC.

CA proposed language:

> None. Delete.

CA comments:

CA believes that AT&T has improperly inserted this language to compel CA to waive its rights to obtain UNE facilities. CA believes that it has the absolute right to obtain any UNE or UNE combination which AT&T is required to provide, regardless of whether or not it is contained in this agreement. Therefore, CA does not waive such rights and believes that AT&T may not insist upon such a waiver as a condition to obtaining this Agreement.

Issue #74a: CA may commingle any UNE element with any non-UNE element that is feasible

First instance appears: UNE, 2.3

AT&T proposed language:

> "Commingling" or "Commingled Arrangement" means an arrangement connecting, attaching, or otherwise linking of a UNE, or a combination of UNEs, to one (1) or more facilities or services that CA has obtained at wholesale from AT&T-21STATE, or the combining of a UNE, or a combination of UNEs, with one (1) or more such facilities or services. Commingling in its entirety (the ability of CA to Commingle, AT&T-22STATE's obligation to perform the functions necessary to Commingle, and Commingled Arrangements) shall not apply to or otherwise include, involve or encompass AT&T-22STATE offerings pursuant to 47 U.S.C. § 271 that are not 251(c)(3) UNEs under 47 U.S.C. § 251(c)(3).

CA proposed language:

> "Commingling" or "Commingled Arrangement" means an arrangement connecting, attaching, or otherwise linking of a UNE, or a combination of UNEs, to one (1) or more facilities or services that CA has obtained at wholesale from AT&T-21STATE, or the combining of a UNE, or a combination of UNEs, with one (1) or more such facilities or services. **CA shall be entitled to commingle any UNE with any other service element purchased from AT&T-21STATE either from this Agreement or from any AT&T-21STATE tariff, so long as the combination is technically feasible. Such commingling shall be required even if the specific arrangement sought by CA is not commonly commingled by AT&T-21STATE.**

CA comments:

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.

Issue #74b: CA may commingle any UNE element with any non-UNE element that is feasible

Second instance appears: UNE, 6.3.3

AT&T proposed language:

> Any Commingling obligation is limited solely to Commingling of one (1) or more facilities or services that are provided at wholesale from AT&T-22STATE with UNEs; accordingly, no other facilities, services or functionalities are subject to Commingling, including but not limited to facilities, services or functionalities that AT&T-22STATE might offer pursuant to Section 271 of the Act.

CA proposed language:

> None. Delete.

CA comments:

CA believes that this issue is fully addressed in UNE, 2.3 and does not need to be re-stated in this section, regardless of the arbitration outcome of UNE 2.3.

Issue #75: AT&T may not arbitrarily restrict UNE availability

Appears: UNE, 8.1.2

AT&T proposed language:

> Consistent with the applicable FCC rules, AT&T-21STATE will make available the UNE Loops set forth herein below between a distribution frame (or its equivalent) in an AT&T-21STATE central office and the UNE Loop demarcation point at an End User premises. The Parties acknowledge and agree that AT&T-21STATE shall not be obligated to provision any of the UNE Loops provided for herein to cellular sites or to any other location that does not constitute an End User premises.

CA proposed language:

> Consistent with the applicable FCC rules, AT&T-21STATE will make available the UNE Loops set forth herein below between a distribution frame (or its equivalent) in an AT&T-21STATE central office and the UNE Loop demarcation point at an End User premises. The Parties acknowledge and agree that AT&T-21STATE shall not be obligated to provision any of the UNE Loops provided for herein to cellular sites or to any other location that does not constitute an End User premises, **except that any location to which AT&T-21STATE has previously connected copper facilities for its own customers' use shall be available for the connection of UNEs at the request of CA.**

CA comments:

CA believes that AT&T should not be permitted to serve its own customers at a location, and then deny CA the ability to serve customers at the same location using the same facilities. CA has left unchanged AT&T's language prohibiting UNEs for cellular sites, but CA believes that otherwise any location where AT&T has delivered copper-based service is UNE-eligible.

Issue #76: AT&T may not charge "market-based rates" for UNEs at any time

Appears: UNE, 3.2

AT&T proposed language:

> If CA procures any UNEs, UNE Combinations and/or Other Services for which rates are not currently in the Pricing Schedule, AT&T-21STATE then reserves the right to charge a current state-specific price/market-based rate.

CA proposed language:

> If CA procures any **UNE or UNE Combinations** for which rates are not currently in the Pricing Schedule, AT&T-21STATE then reserves the right to charge a current **Commission-Approved state-specific price.**
>
> If CA procures any **non-UNE Other Services** for which rates are not currently in the Price Schedule, AT&T-21STATE, then reserves the right to charge a **current state-specific market based price/rate**.

CA comments:

CA believes that its language is consistent with current regulations, and that in no case is an ILEC permitted to charge a "Market based price" for a UNE. It is well established that UNEs must always bear a TELRIC-based price.

Issue #77a: CA must have adequate transition time when a UNE is being sunset
First Instance Appears: UNE, 6.2.6

AT&T proposed language:

> If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular Conversion of a wholesale service, or group of wholesale services, to the equivalent 251(c)(3) UNE, or combination of 251(c)(3) UNEs, CLEC shall not request such Conversion or continue using such 251(c)(3) UNE or 251(c)(3) UNEs that result from such Conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility criteria applicable to a 251(c)(3) UNE or combination of 251(c)(3) UNEs, AT&T-21STATE may convert the 251(c)(3) UNE or 251(c)(3) UNE combination to the equivalent wholesale service or group of wholesale services, upon thirty (30) days written Notice to CLEC.

CA proposed language:

> If CA does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular Conversion of a wholesale service, or group of wholesale services, to the equivalent 251(c)(3) UNE, or combination of 251(c)(3) UNEs, CA shall not request such Conversion or continue using such 251(c)(3) UNE or 251(c)(3) UNEs that result from such Conversion. To the extent CA fails to meet (including ceases to meet) the eligibility criteria applicable to a 251(c)(3) UNE or combination of 251(c)(3) UNEs, AT&T-21STATE may convert the 251(c)(3) UNE or 251(c)(3) UNE combination to the equivalent wholesale service or group of wholesale services, upon **one hundred eighty (180) days** written Notice to CA.

CA comments:

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), 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.

Issue #77b: CA must have adequate transition time when a UNE is being sunset
Second Instance Appears: UNE, 14.11.2 – 14.11.3

AT&T proposed language:

For the affected UNE Loop/Transport element(s) installed after March 11, 2005, CA will provide a true-up to an equivalent special access rate as of the later of the date billing began for the provisioned element or thirty (30) calendar days after AT&T-21STATE's Notice of non-impairment. If no equivalent special access rate exists, a true-up will be determined using the Transitional Rates. The applicable equivalent special access rate/Transitional Rates will continue to apply until the facility has been transitioned.

For affected UNE Loop/Transport elements ordered before AT&T-21STATE's Wire Center designation, if the applicable transition period is within the initial TRRO transition period described in Section 15.0 below of this Agreement, CA will provide a true-up during the period between the date that is thirty (30) calendar days after AT&T-21STATE's Notice of non-impairment and the date the circuit is transitioned to the Transitional Rates.

if the applicable transition period is after the initial TRRO transition period described in Section 14.1 above of this Agreement has expired, CA will provide a true-up based on the Transitional Rates between the date that is thirty (30) calendar days after AT&T-21STATE's Notice of non-impairment and the end of the applicable transition period described in Section 15.1 below and the equivalent special access rates during the period between the end of the initial transition period and the date the circuit is actually transitioned. If no equivalent special access rate exists, a true-up will be determined using the Transitional Rates. The applicable equivalent special access/Transitional Rates as described above will continue to apply until the facility has been transitioned.

For affected UNE Loop/Transport elements ordered after AT&T-21STATE's Wire Center designation, CA will provide a true-up for the affected UNE Loop/Transport element(s) to an equivalent special access rate for the affected UNE Loop/Transport element(s) as of the later of the date billing began for the provisioned element or thirty (30) calendar days after AT&T-21STATE's Notice of non-impairment. If no equivalent special access rate exists, a true-up will be determined using the Transitional Rates. The applicable equivalent special access/Transitional Rates will continue to apply until the facility has been transitioned.

CA proposed language:

CA will provide a true-up to an equivalent special access rate as of the later of the date billing began for the provisioned element or **one hundred eighty (180)** calendar days after AT&T-21STATE's Notice of non-impairment. If no equivalent special access rate exists, a true-up will be determined using the Transitional Rates. The applicable equivalent special access rate/Transitional Rates will continue to apply until the facility has been transitioned.

For affected UNE Loop/Transport elements ordered before AT&T-21STATE's Wire Center designation,

CA will provide a true-up based on the Transitional Rates between the date that is **one hundred eighty (180)** calendar days after AT&T-21STATE's Notice of non-impairment and the end of the applicable transition period described in Section 15.1 below and the equivalent special access rates during the period between the end of the initial transition period and the

date the circuit is actually transitioned. If no equivalent special access rate exists, a true-up will be determined using the Transitional Rates. The applicable equivalent special access/Transitional Rates as described above will continue to apply until the facility has been transitioned.

For affected UNE Loop/Transport elements ordered after AT&T-21STATE's Wire Center designation, CA will provide a true-up for the affected UNE Loop/Transport element(s) to an equivalent special access rate for the affected UNE Loop/Transport element(s) as of the later of the date billing began for the provisioned element or one hundred eighty (180) calendar days after AT&T-21STATE's Notice of non-impairment. If no equivalent special access rate exists, a true-up will be determined using the Transitional Rates. The applicable equivalent special access/Transitional Rates will continue to apply until the facility has been transitioned.

CA comments:

See comments to Issue 77a above. 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. AT&T did not respond to CA on this issue.

Issue #78: AT&T must send notices of major network changes, not just post to website

Appears: UNE, 15.1

AT&T proposed language:

AT&T-21STATE may update the Wire Center list as changes occur.

To designate a Wire Center that had previously not met one (1) or more of the FCC's impairment thresholds but subsequently does so, AT&T-21STATE will provide notification to CLECvia Accessible Letter and by a posting on AT&T CLEC Online website.AT&T-21STATE will continue to accept CLEC orders for impacted DS1/DS3 UNE Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport without requiring CLEC self-certification for thirty (30) calendar days after the date the Accessible Letter is issued .

In the event the CLEC disagrees with AT&T-21STATE's determination, CLEC will have sixty (60) calendar days from the issuance of the Accessible Letter to dispute AT&T-21STATE's Wire Center determination by providing a self-certification to AT&T-21STATE.

If the CLEC does not use the self-certification process described in Section 15.1.4 above to self-certify against AT&T-21STATE's Wire Center designation within sixty (60) calendar days of the issuance of the Accessible Letter, CLEC must transition all circuits that have been declassified by the Wire Center designation(s) by disconnecting or transitioning to an alternate facility or arrangement, if available, within thirty (30) calendar days ending on the ninetieth (90^{th}) day after the issuance of the Accessible Letter providing the Wire Center designation of non-impairment; no additional notification from AT&T-21STATE will be required. CLEC may not obtain new DS1/DS3 UNE Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport in Wire Centers and/or Routes where such circuits have been declassified during the applicable transition period. If CLEC fails to disconnect or transition to an alternate facility or arrangement within such thirty (30) day period, AT&T-21STATE may disconnect such circuits or beginning billing CLEC the equivalent special access rate. If no equivalent special access rate exists, a true-up will be determined using the transitional rates set forth in Section 15.2 below.

If CLEC does provide self-certification to dispute AT&T-21STATE's designation determination within sixty (60) calendar days of the issuance of the Accessible Letter, AT&T-21STATE may dispute CLEC's self-certification as described in Section 14.8 above of this Agreement and AT&T-21STATE will accept and provision the applicable UNE Loop and Transport orders for the CLEC providing the self certification during a dispute resolution process.

CA proposed language:

AT&T-21STATE may update the Wire Center list as changes occur.

To designate a Wire Center that had previously not met one (1) or more of the FCC's impairment thresholds but subsequently does so, AT&T-21STATE will provide **written notification to CA under the notices provision of this agreement** and by a posting on

AT&T CLEC Online website. AT&T-21STATE will continue to accept CA orders for impacted DS1/DS3 UNE Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport without requiring CA self-certification for thirty (30) calendar days after the date that the written notice was delivered to CA.

In the event CA disagrees with AT&T-21STATE's determination, CA will have sixty (60) calendar days from the date that the written notice was delivered to dispute AT&T-21STATE's Wire Center determination by providing a self-certification to AT&T-21STATE.

If the CA does not use the self-certification process described in Section 15.1.4 above to self-certify against AT&T-21STATE's Wire Center designation within sixty (60) calendar days of the issuance of the written notice, CA must transition all circuits that have been declassified by the Wire Center designation(s) by disconnecting or transitioning to an alternate facility or arrangement, if available, within one hundred eighty (180) calendar days after the date that the written notice was delivered providing the Wire Center designation of non-impairment; no additional notification from AT&T-21STATE will be required. CA may not obtain new DS1/DS3 UNE Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport in Wire Centers and/or Routes where such circuits have been declassified during the applicable transition period. If CA fails to disconnect or transition to an alternate facility or arrangement within such one hundred eightly (180) day period, AT&T-21STATE may disconnect such circuits or beginning billing CA the equivalent special access rate. If no equivalent special access rate exists, a true-up will be determined using the transitional rates set forth in Section 15.2 below.

If CA does provide self-certification to dispute AT&T-21STATE's designation determination within sixty (60) calendar days of the issuance of the written notice, AT&T-21STATE may dispute CA's self-certification as described in Section 14.8 above of this Agreement and AT&T-21STATE will accept and provision the applicable UNE Loop and Transport orders for the CA providing the self certification during a dispute resolution process.

CA comments:

AT&T should provide actual notice to CA for such major changes affecting CA. Simply posting them 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.

Issue #79: AT&T may not take in-service CA UNEs to provision service for its customers

Appears: UNE, 4.5.5

AT&T proposed language:

None

CA proposed language:

AT&T-21STATE shall not tamper with or convert an in-service UNE provided to CA for its own benefit or business purposes or for its own customers and/or substitute another UNE in its place.

CA comments:

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 many 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 customer's service on them. If AT&T takes a CLEC's conditioned, tested loop for its own customer and substitutes an unconditioned, untested one, a 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.

Issue #80: CA may use Unbundled Network Elements in its own network for any purpose

Appears: UNE, 4.6.1

AT&T proposed language:

> CLEC cannot use a UNE (whether on a stand-alone basis, in combination with other UNEs, or otherwise), with a network element possessed by CLEC (or otherwise) to provide service to itself, or for other administrative purpose(s).

CA proposed language:

None

CA comments:

CA believes that it is well settled that CA is permitted to order and use UNEs as a part of CA'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.

Issue #81a: Multiplexing (muxing) is not a component of an EEL arrangement
First instance appears: UNE, 6.4.2

AT&T proposed language:

> AT&T-21STATE is not obligated, and shall not, provide access to (1) an unbundled DS1 UNE Loop in combination, or Commingled, with a DS1 UDT facility or service or a DS3 or higher UDT facility or service, or an unbundled DS3 UNE Loop in combination, or Commingled, with a DS3 or higher UDT facility or service, or (2) an unbundled DS1 UDT facility in combination, or Commingled, with an unbundled DS1 UNE Loop or a DS1 channel termination service, or to an unbundled DS3 UDT facility in combination, or Commingled, with an unbundled DS1 UNE Loop or a DS1 channel termination service, or to an unbundled DS3 UNE Loop or a DS3 or higher channel termination service (collectively, the "Included Arrangements"), unless CA certifies that all of the following conditions are met with respect to the arrangement being sought:

CA proposed language:

> **<u>AT&T-21STATE</u> is not obligated, and shall not, provide access to (1) an unbundled DS1 UNE Loop in combination, or Commingled, with a DS1 UDT facility or service or a DS3 or higher UDT facility or service, or an unbundled DS3 UNE Loop in combination, or Commingled, with a DS3 or higher UDT facility or service, or (2) an unbundled DS1 UDT facility in combination, or Commingled, with an unbundled DS1 UNE Loopor to an unbundled DS3 UNE Loop (collectively, the "Included Arrangements"), unless CA certifies that all of the following conditions are met with respect to the arrangement being sought:**

CA comments:

The FCC has clearly defined an Extended Enhanced Loop (EEL) as a loop plus transport combination. AT&T is here attempting to re-define the term to also include loop plus multiplexing (channel termination), and also transport plus multiplexing (channel termination). CA does not dispute that multiplexing may be a combination, but it does not automatically follow that multiplexing always makes the combination an EEL. A combination which includes multiplexing would only be an EEL if it contained both loop+transport, along with the multiplexing. This deliberately inaccurate definition would restrict CA's ability to order and use multiplexing as a UNE, which CA is entitled to do without it being considered an EEL.

Issue #81b: Multiplexing (muxing) is not a component of an EEL arrangement
Second instance appears: UNE, 9.1.5 – 9.1.6

AT&T proposed language:

> DS1 and DS3 UDT includes, as follows:
> Multiplexing – an option ordered in conjunction with DS1 or DS3 UDT that converts a circuit from higher to lower bandwidth, or from digital to voice grade. Multiplexing is only available when ordered at the same time as DS1 or DS3 UDT and at the rates set forth in the Pricing Schedule.

CA proposed language:

> DS1 and DS3 UDT includes, as follows:
> (remainder deleted)

CA comments:

Transport is a circuit that "transports" optical or electrical signals from one physical location to another. AT&T is here attempting to re-define the term multiplexing (aka channel termination) as a form of transport, which it clearly is not. This deliberately inaccurate definition would restrict CA's ability to order and use multiplexing as a UNE, which CA is entitled to do without it being considered an EEL. CA does not believe that it should be required that UDT must be ordered as part of a combination with multiplexing. If, for example, CA has a collocation in a AT&T wire center and CA desires to purchases DS3/DS1 multiplexing in that wire center, with the DS3 connected to the CA collocation and the DS1 circuits used for interconnection trunks or for customer-facing DS1 circuits ordered from AT&T, then multiplexing is required but there need not be any transport involved. CA believes that AT&T is required to provide UNEs in any technically feasible combination including multiplexing, and AT&T has not shown any reason why this example scenario is not technically feasible. AT&T's proposed requirement that multiplexing is only available in combination with UDT seems to be totally arbitrary and needlessly limits CA's options.

Issue #82a: AT&T must provide notice to CA before converting UNEs to special access
First Instance Appears: UNE, 8.1.3.4.4

AT&T proposed language:

> DS1 UNE Loop "Caps" – AT&T-21STATE is not obligated to provide to CA more than ten (10) DS1 Digital UNE Loops to any single Building in which DS1 Digital UNE Loops have not been otherwise Declassified; accordingly, CA may not order or otherwise obtain, and CA will cease ordering unbundled DS1 Digital UNE Loops once CA has already obtained ten DS1 Digital UNE Loops at the same Building. If, notwithstanding this Section, CA submits such an order, at AT&T-21STATE's option it may accept or reject the order, but convert any requested DS1 Digital UNE Loop(s) in excess of the Cap to Special Access; applicable Special Access charges will apply to CA for such DS1 Digital UNE Loop(s) as of the date of provisioning.

CA proposed language:

> DS1 UNE Loop "Caps" – AT&T-21STATE is not obligated to provide to CA more than ten (10) DS1 Digital UNE Loops to any single Building in which DS1 Digital UNE Loops have not been otherwise Declassified; accordingly, CA may not order or otherwise obtain, and CA will cease ordering unbundled DS1 Digital UNE Loops once CA has already obtained ten DS1 Digital UNE Loops at the same Building. If, notwithstanding this Section, CA submits such an order, at AT&T-21STATE's option it may accept or reject the order**. If AT&T-21STATE accepts an order and installs the service, then It must follow the conversion process in this provision prior to billing for the circuit as special access. Prior to conversion of a CA circuit to Special Access, AT&T-21STATE shall notify CA in writing and CA shall then have 30 days in which to transition or disconnect the circuit prior to conversion by AT&T-21STATE or to invoke the dispute resolution process in this agreement if it believes that AT&T is not entitled to the conversion.**

CA comments:

CA believes that it is reasonable that AT&T must actually notify CA of its intention prior to converting an in-service circuit, so that CA has time to make its own decision and service change before AT&T's action occurs. For new orders, CA does not believe that AT&T should automatically install a circuit other than what was ordered if what was ordered is unavailable. AT&T should reject the UNE order back to CA stating that the ordered service is not available, instead of installing special access when UNE was ordered. If AT&T installs the circuit, then it should be installed as a UNE as ordered by CA, and then AT&T may begin the conversion process by sending the required notice if desired.

Issue #82b: AT&T must provide notice to CA before converting UNEs to special access
Second Instance Appears: UNE, 8.1.3.5.4

AT&T proposed language:

> DS3 UNE Loop "Caps" – AT&T-21STATE is not obligated to provide to CA more than one (1) DS3 Digital UNE Loop per requesting carrier to any single Building in which DS3 Digital UNE Loops have not been otherwise Declassified; accordingly, CA may not order or otherwise obtain, and CA will cease ordering unbundled DS3 Digital UNE Loops once CA has already obtained one DS3 Digital UNE Loop at the same Building. If, notwithstanding this Section, CA submits such an order, at AT&T-21STATE's option it may accept or reject the order, **but convert any requested DS3 Digital UNE Loop(s) in excess of the Cap to Special Access; applicable Special Access charges will apply to CA for such DS3 Digital UNE Loop(s) as of the date of provisioning.**

CA proposed language:

> DS3 UNE Loop "Caps" – AT&T-21STATE is not obligated to provide to CA more than one (1) DS3 Digital UNE Loop per requesting carrier to any single Building in which DS3 Digital UNE Loops have not been otherwise Declassified; accordingly, CA may not order or otherwise obtain, and CA will cease ordering unbundled DS3 Digital UNE Loops once CA has already obtained one DS3 Digital UNE Loop at the same Building. If, notwithstanding this Section, CA submits such an order, at AT&T-21STATE's option it may accept or reject the order. **If AT&T-21STATE accepts an order and installs the service, then It must follow the conversion process in this provision prior to billing for the circuit as special access. Prior to conversion of a CA circuit to Special Access, AT&T-21STATE shall notify CA in writing and CA shall then have 30 days in which to transition or disconnect the circuit prior to conversion by AT&T-21STATE or to invoke the dispute resolution process in this agreement if it believes that AT&T is not entitled to the conversion.**

CA comments:

CA believes that it is reasonable that AT&T must actually notify CA of its intention prior to converting an in-service circuit, so that CA has time to make its own decision and service change before AT&T's action occurs. For new orders, CA does not believe that AT&T should automatically install a circuit other than what was ordered if what was ordered is unavailable. AT&T should reject the UNE order back to CA stating that the ordered service is not available, instead of installing special access when UNE was ordered. If AT&T installs the circuit, then it should be installed as a UNE as ordered by CA, and then AT&T may begin the conversion process by sending the required notice if desired.

Issue #82c: AT&T must provide notice to CA before converting UNEs to special access
Third Instance Appears: UNE, 9.1.5.1 – 9.1.5.2

AT&T proposed language:

DS3 UDT Caps – AT&T-21STATE is not obligated to provide to CA more than twelve (12) DS3 UDT circuits on each Route on which DS3 Dedicated Transport has not been otherwise Declassified; accordingly, CA may not order or otherwise obtain, and CA will cease ordering unbundled DS3 Dedicated Transport once CA has already obtained twelve DS3 UDT circuits on the same Route. If, notwithstanding this Section, CA submits such an order, at AT&T-21STATE's option, it may accept or reject the order, but convert any requested DS3 UDT in excess of the Cap to Special Access; applicable Special Access charges will apply to CA for such DS3 Dedicated Transport circuits as of the date of provisioning.

DS1 UDT Caps - AT&T-21STATE is not obligated to provide to CA more than ten (10) DS1 251(c)(3) UDT circuits on each route on which DS1 Dedicated Transport has not been otherwise Declassified; accordingly, CA may not order or otherwise obtain, and CA will cease ordering unbundled DS1 Dedicated Transport once CA has already obtained ten DS1 251(c)(3) UDT circuits on the same route. If, notwithstanding this Section, CA submits such an order, at AT&T-21STATE's option it may accept the order, but convert any requested DS1 251(c)(3) UDT in excess of the Cap to Special Access, and applicable Special Access charges will apply to CA for such DS1 Dedicated Transport circuits as of the date of provisioning.

CA proposed language:

DS3 UDT Caps – AT&T-21STATE is not obligated to provide to CA more than twelve (12) DS3 UDT circuits on each Route on which DS3 Dedicated Transport has not been otherwise Declassified; accordingly, CA may not order or otherwise obtain, and CA will cease ordering unbundled DS3 Dedicated Transport once CA has already obtained twelve DS3 UDT circuits on the same Route. If, notwithstanding this Section, CA submits such an order, at AT&T-21STATE's option, it may accept or reject the order, but convert any requested DS3 UDT in excess of the Cap to Special Access; applicable Special Access charges will apply to CA for such DS3 Dedicated Transport circuits as of the date of provisioning. **If AT&T-21STATE accepts an order and installs the service, then It must follow the conversion process in this provision prior to billing for the circuit as special access. Prior to conversion of a CA circuit to Special Access, AT&T-21STATE shall notify CA in writing and CA shall then have 30 days in which to transition or disconnect the circuit prior to conversion by AT&T-21STATE or to invoke the dispute resolution process in this agreement if it believes that AT&T is not entitled to the conversion.**

DS1 UDT Caps - AT&T-21STATE is not obligated to provide to CA more than ten (10) DS1 251(c)(3) UDT circuits on each route on which DS1 Dedicated Transport has not been otherwise Declassified; accordingly, CA may not order or otherwise obtain, and CA will cease ordering unbundled DS1 Dedicated Transport once CA has already obtained ten DS1 251(c)(3) UDT circuits on the same route. If, notwithstanding this Section, CA submits such an order, at AT&T-21STATE's option it may accept the order, but convert any requested DS1 251(c)(3) UDT in excess of the Cap to Special Access, and applicable Special Access

charges will apply to CA for such DS1 Dedicated Transport circuits as of the date of provisioning. **If AT&T-21STATE accepts an order and installs the service, then It must follow the conversion process in this provision prior to billing for the circuit as special access. Prior to conversion of a CA circuit to Special Access, AT&T-21STATE shall notify CA in writing and CA shall then have 30 days in which to transition or disconnect the circuit prior to conversion by AT&T-21STATE or to invoke the dispute resolution process in this agreement if it believes that AT&T is not entitled to the conversion.**

CA Comments:

See responses to Issue 82a and 82b.

Issue #83: CA may order and resell AT&T Resale service in any lawful manner

Appears: Resale, 3.2

AT&T proposed language:

> AT&T-21STATE has no obligation to make services available at the Resale Discount to CA for its own use or for the use of one or more of its parent, Affiliates, subsidiaries or similarly-related entities. CA shall not use any Resale Service to avoid the rates, terms and conditions of AT&T-21STATE's corresponding retail Tariff(s). Moreover, CA shall not use any Resale Service to provide access or interconnection services to itself, interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other Telecommunications providers; provided, however, that CA may permit its End Users to use resold local Exchange telephone service to access IXCs, wireless carriers, CAPs, or other retail Telecommunications providers.

CA proposed language:

> **CA shall not use any Resale Service to provide access or interconnection services to itself, interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other Telecommunications providers; provided, however, that CA may permit its End Users to use resold local exchange telephone service to access IXCs, wireless carriers, CAPs, or other retail telecommunications providers.**

CA comments:

CA believes that it is entitled to sell resale service to any party it chooses, as long as it does not violate the terms of this Agreement. For example, CA should be entitled to order and use resale service for a burglar/fire alarm line or for a fax line at an affiliate's office building or at the home of one of CA's officers. CA does not object to and has left unchanged AT&T's language prohibiting use of resale service to provide access or interconnection.

Issue #84: AT&T shall comply with detailed billing requirements for Resale services

AT&T proposed language:

> Charges billed to CA for all services provided under this Attachment shall be paid by CA regardless of CA's ability or inability to collect from its End Users for such services.

CA proposed language:

> Charges billed to CA for all services provided under this Attachment shall be paid by CA regardless of CA's ability or inability to collect from its End Users for such services. **Unless otherwise agreed by the parties, AT&T-21STATE shall provide monthly billing detail to CA at no cost to CA which, at a minimum, meets all regulatory requirements of FCC Order 99-72 for detailed billing. Detailed bills shall provide the telephone number and rate of each resold line billed for that month, along with any optional features for each line and the rate associated with each optional feature billed. Detailed bills shall also provide a description of any non-recurring charges and the cost of each, along with a detail of any usage-based charges. Each charge, including monthly recurring, non-recurring and usage shall clearly identify which telephone number the charge applies to.**

CA comments:

CA believes that it is entitled to the billing detail sought because it is already required by FCC 99-72. CA notes that it would be unable to properly bill its end users if AT&T failed to provide the detail required.

Issue #85a: CA may opt out of OS/DA service for its subscribers; both facilities and resale
First instance appears: Customer Info Services, 1.2.2

AT&T proposed language:

> CLEC shall be the retail OS/DA provider to its End Users, and AT&T-21STATE shall be the wholesale provider of OS/DA operations to CLEC, AT&T-21STATE shall answer CLEC's End User OS/DA calls on CLEC's behalf, as follows:

CA proposed language:

> CA shall be the retail OS/DA provider to its End Users, and AT&T-21STATE shall be the wholesale provider of OS/DA operations to CA, **if CA chooses to order OS/DA from AT&T-22STATE. If ordered**, **AT&T-21STATE** shall answer CA's End User OS/DA calls on CA's behalf, as follows:

CA comments:

CA believes that it should not be compelled to offer AT&T OS/DA service to either its facilities-based customers or its resale customers. CA notes that AT&T retail customers have the ability to limit pay-per-use calls such as OS/DA, so CA should have the same ability.

Issue #85b: CA may opt out of OS/DA service for its subscribers; both facilities and resale
Second instance appears: Customer Info Services, 1.2.3

AT&T proposed language:

CLEC shall pay the applicable OS/DA rates found in the Pricing Sheet based upon CLEC's status as a Facilities-Based CLEC or a reseller. Provided however, CLEC may serve both as a reseller and as a facilities-based provider, and CLEC may convert its facilities-based End Users to Resale service, or vice versa, as described below in Section 3.6.8 below.

CLEC acknowledges and understands that wholesale OS/DA rates differ between Resale and facilities-based service, and that both types of OS/DA wholesale rates are listed in the Pricing Sheet.

Billing and payment details, including the assessment of late payment charges for unpaid balances, are governed by the General Terms and Conditions in this Agreement.

CA proposed language:

CA shall pay the applicable OS/DA rates found in the Pricing Sheet based upon CA's status as a Facilities-Based CA or a reseller. Provided however, CA may serve both as a reseller and as a facilities-based provider, and CA may convert its facilities-based End Users to Resale service, or vice versa, as described below in Section 3.6.8 below.

CA acknowledges and understands that wholesale OS/DA rates differ between Resale and facilities-based service, and that both types of OS/DA wholesale rates are listed in the Pricing Sheet.

Billing and payment details, including the assessment of late payment charges for unpaid balances, are governed by the General Terms and Conditions in this Agreement.

Nothing herein shall obligate CA to provide OS/DA service, to its subscribers nor to order OS/DA services from AT&T-22STATE. CA shall have the absolute right to deny OS/DA service to any or all of its subscribers without penalty or charge from AT&T-21STATE.

CA comments:

See comment to 85a.

Issue #86: CA is not required to provide AT&T with its subscriber information or pay for non-published numbers which belong to CA non-resale customers

Appears: Customer Info Services, 6.2.1.3.1

AT&T proposed language:

> CLEC will provide to AT&T-21STATE the names, addresses and telephone numbers of all CLEC End Users who wish to be omitted from directories. Non-listed/Non-Published listings will be subject to the rates as set forth in the Pricing Sheet.

CA proposed language:

> CA **may** provide to **AT&T-21STATE** the names, addresses and telephone numbers of all CA End Users who wish to be omitted from directories. Non-listed/Non-Published listings will be subject to the rates as set forth in the Pricing Sheet. **CA shall not be obligated to provide any information to AT&T-22STATE for telephone numbers on CA's own network for which the End User does not wish to be listed, and CA shall have no payment obligation to AT&T-22STATE when it does not provide listing information to AT&T-22STATE for its own facilities-based subscribers.**

CA comments:

CA believes that AT&T's proposed language is anti-competitive. There is no compelling reason why CA should be obligated to share any customer proprietary network information ("CPNI") with AT&T when there is no reason to do so. For CA to be required to provide its customer list, and then be obligated to pay AT&T to keep it confidential, is ridiculous. AT&T has rejected CA's language, but failed to provide any justification for its position. AT&T has in fact refused to engage in any discussion on the matter.

Issue #87: AT&T does not control the timing of CA order processing for CA customers

Appears: Customer Info Services, 6.2.3

AT&T proposed language:

> CLEC will provide accurate subscriber listing information of its subscribers to AT&T-21STATE via a mechanical or manual feed of the directory listing information to AT&T-21STATE's Directory Listing database. CLEC agrees to submit all listing information via a mechanized process within six (6) months of the Effective Date of this Agreement, or upon CLEC reaching a volume of two hundred (200) listing updates per day, whichever comes first. CLEC's subscriber listings will be interfiled (interspersed) in the directory among AT&T-21STATE's subscriber listing information. CLEC will submit listing information within one (1) Business Day of installation, disconnection or other change in service (including change of non-listed or non-published status) affecting the DA database or the directory listing of a CLEC End User. CLEC must submit all listing information intended for publication by the directory close (a/k/a last listing activity) date.

CA proposed language:

> CA will provide accurate subscriber listing information of its subscribers to AT&T-21STATE via a mechanical or manual feed of the directory listing information to AT&T-21STATE's Directory Listing database. CA agrees to submit all listing information via a mechanized process within six (6) months of the Effective Date of this Agreement, or upon CA reaching a volume of two hundred (200) listing updates per day, whichever comes first. CA's subscriber listings will be interfiled (interspersed) in the directory among AT&T-21STATE's subscriber listing information. CA must submit all listing information intended for publication by the directory close (a/k/a last listing activity) date.

CA comments:

CA believes that AT&T has no compelling reason nor any right to control CA's business processes which affect CA customers. Therefore, CA has deleted one sentence from AT&T's proposed language related to Directory Listings.

Issue #88: CA retains control of its own facilities-based customers' directory listings

Appears: Customer Info Services, 6.2.4

AT&T proposed language:

> Through the normal course of business, End Users may notify AT&T-21STATE, or its publishing Affiliate, of inaccurate or incomplete listing information. In such instance, AT&T-21STATE, or its publishing Affiliate, shall take appropriate action, as directed by the End User to update the listing. AT&T-212STATE, or its publishing Affiliate, shall also inform CLEC of the deficiency and direct CLEC to send a listing update with the information necessary to make the End User Listing accurate and complete. CLEC shall respond within five (5) Business Days to such direction from AT&T-21STATE, or its publishing Affiliate.

CA proposed language:

> Through the normal course of business, End Users may notify **AT&T-21STATE** of inaccurate or incomplete listing information. In such instance, **AT&T-21STATE shall not change the information in any listing previously ordered by CA, but may either direct the End User to contact CA in order to make the change, or may inform CA of the End User's request and request CA to send a listing update with the requested information.** CA shall not be obligated to place any change order in its sole discretion.

CA comments:

CLECs have encountered issues where a person seeks to purchase advertising from the ILEC's directory publishing affiliate, and the ordering party or the ILEC affiliate inadvertently orders a directory listing change which the CLEC's business customer has not authorized or is unaware of. Sometimes, the ordering party is not authorized to place any order with the ILEC affiliate at all, but simply answered a sales solicitation call from the ILEC affiliate. CLECs maintains CPNI records, including the identity of anyone authorized to make changes to the End User's service, and neither the ILEC nor its affiliates have that information. Therefore, the identity and authority to make changes of the person requesting a change from the ILEC or its affiliate has not been validated at all. If an unauthorized person were able to make a change to a business's directory listing, serious harm to a CLEC's business customer could result.

In cases such as these, it is crucial that CA retain control over its own customers' directory listings and that neither AT&T nor its affiliates may unilaterally change such listings for CA's customers. It is also imperative that CA has no obligation to make changes based upon any request from AT&T or its affiliate.

Issue #89: AT&T may not use CA CPNI for winback or marketing campaigns

Appears: Customer Info Services, 6.2.7.1

AT&T proposed language:

> AT&T-21STATE agrees to serve as the single point of contact for all independent and Third Party directory publishers who seek to include CA's subscriber (i.e., End User) listing information in an area directory, and to handle the CA's subscriber listing information in the same manner as AT&T-21STATE's subscriber listing information. In exchange for AT&T-21STATE serving as the single point of contact and handling all subscriber listing information equally, CA authorizes AT&T-21STATE to include and use the CA subscriber listing information provided to AT&T-21STATE's DA databases, and to provide CA subscriber listing information to directory publishers. Included in this authorization is release of CA listings to requesting competing carriers as required by Section 271(c)(2)(B)(vii)(II) and Section 251(b)(3) and any applicable state regulations and orders. Also included in this authorization is AT&T-21STATE's use of CA's subscriber listing information in AT&T-21STATE's DA, DA related products and services, and directory publishing products and services.

CA proposed language:

> AT&T-21STATE agrees to serve as the single point of contact for all independent and Third Party directory publishers who seek to include CA's subscriber (i.e., End User) listing information in an area directory, and to handle the CA's subscriber listing information in the same manner as AT&T-21STATE's subscriber listing information. In exchange for AT&T-21STATE serving as the single point of contact and handling all subscriber listing information equally, CA authorizes AT&T-21STATE to include and use the CA subscriber listing information provided to AT&T-21STATE's DA databases, and to provide CA subscriber listing information to directory publishers. Included in this authorization is release of CA listings to requesting competing carriers as required by Section 271(c)(2)(B)(vii)(II) and Section 251(b)(3) and any applicable state regulations and orders. Also included in this authorization is AT&T-21STATE's use of CA's subscriber listing information in AT&T-21STATE's DA, DA related products and services, and directory publishing products and services. **Neither AT&T-21STATE nor any of its affiliates shall use CA subscriber information for any marketing or "winback" efforts or campaigns, unless 1. the subscriber information is provided in the aggregate form along with all AT&T-21STATE subscriber information and 2. CA subscribers cannot be identified and separated from other subscribers from the information provided.**

CA comments:

CA believes that its revision is reasonable and complies with current FCC orders regarding CPNI.

Issue #90: Reimbursement for breach of Agreement should be in parity, not one-sided

Appears: Customer Info Services, 6.2.8

AT&T proposed language:

> CLEC further agrees to pay all costs incurred by AT&T-22STATE and/or its Affiliates as a result of CLEC not complying with the terms of this Attachment.

CA proposed language:

> **Each party** further agrees to pay all **reasonable** costs incurred by **the other party and/or its Affiliates** as a result of **a party** not complying with the terms of this Attachment.

CA comments:

Since either party may damage the other by breaching the Agreement, CA believes that its revision makes common sense. AT&T's language is self-serving and one-sided.

Issue #91: AT&T may only terminate services that it is not required to provide to CA

Appears: Customer Info Services, 7.1

AT&T proposed language:

> Notwithstanding the foregoing, AT&T-21STATE reserves the right to suspend, modify or terminate, without penalty, this Attachment in its entirety or any Service(s) or features of Service(s) offerings that are provided under this Attachment on ninety (90) day's written notice.

CA proposed language:

> Notwithstanding the foregoing, AT&T-21STATE reserves the right to suspend, modify or terminate, without penalty, this Attachment in its entirety or any Service(s) or features of Service(s) offerings that are provided under this Attachment on ninety (90) day's written notice. **This provision shall not apply to any service which AT&T-21STATE is required by law or regulation to provide to CA.**

CA comments:

This attachment provides for UNE services such as directory listings and directory assistance listings. CA believes that AT&T has a continuing obligation to provide these UNEs and may not disconnect or unilaterally change them at its own discretion. Such changes would require Commission approval and/or a contract amendment between the Parties.

EXHIBIT C

Unresolved Pricing Issues

EXHIBIT D

Resolved Issues

The parties have resolved these issues through negotiation prior to arbitration:

1. Numerous syntax and spelling errors
2. Compromise on CA ability to order DC power in one-ampere increments
3. Compromise on deadline for CA OCN changes
4. Compromise on 2 month deposit requirement
5. Clarification to only permit AT&T to terminate agreement for inability to contact CA if the inability to contact CA is not AT&T's fault and only if the notices address is invalid
6. Deletion of tandem switching rate parity requirement
7. Clarification that CA only pays for 800 database dips that it actually sends to AT&T
8. Clarification that the ISP 3-to-1 presumption is rebuttable
9. Clarification on security if intermediary boxes when using subloop arrangements
10. Clarification to pole attachment markings, non-discriminatory access to poles
11. Clarification that CA is not required to pay more than 10% overage on written makeready estimate without prior written approval for the overage
12. Clarification on format of request for removal for pole attachments
13. Removal of obsolete "New Entrant CA is unaware of…" language for UNEs
14. Clarification that CA is entitled to UNE combinations even if it could build collocation to combine UNEs itself
15. Clarification that AT&T must bill the UNE portion of a commingled circuit at UNE rates
16. Clarification of what proof Is acceptable to prove local service over an EEL circuit
17. Clarification that AT&T may not charge for repairs to a NID on a UNE circuit
18. Clarification that the Commission has continuing authority over the Agreement
19. Revision to minimum dark fiber strands available to CA to 2 strands
20. Clarification that adding a drop wire is a routine network modification
21. Clarification of contact person for CA to notify of wirecenter self-certification
22. Revision to remove AT&T ability to take CA revenues by alleging resale violation
23. Clarification that CA may perform inside wire work for its customers
24. Clarification that AT&T may provide call detail records to law enforcement
25. Clarification that CA is not required to purchase DAL Service from AT&T