

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 140156-TP

PETITION BY COMMUNICATIONS
AUTHORITY, INC. FOR
ARBITRATION OF SECTION 252 (B)
INTERCONNECTION AGREEMENT WITH
BELLSOUTH TELECOMMUNICATIONS,
LLC D/B/A AT&T FLORIDA.

VOLUME 2

(Pages 164 through 407)

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: COMMISSIONER RONALD A. BRISÉ
COMMISSIONER JULIE I. BROWN
COMMISSIONER JIMMY PATRONIS

DATE: Wednesday, May 6, 2015

TIME: Commenced at 10:40 a.m.
Concluded at 3:05 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, CRR, RPR
Official FPSC Reporter
(850) 413-6734

APPEARANCES: (As heretofore noted.)

I N D E X

WITNESSES

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P R O C E E D I N G S

(Transcript continues in sequence following
Volume 1.)

COMMISSIONER BRISÉ: All right. AT&T, call
your first witness.

MR. FRIEDMAN: AT&T Florida calls Patricia
Pellerin.

Whereupon,

PATRICIA H. PELLERIN

was called as a witness on behalf of AT&T Florida
and, having first been duly sworn, testified as follows:

EXAMINATION

BY MR. FRIEDMAN:

Q Good morning. Are you ready?

A Yes.

Q You've been sworn, so you understand you're
already under oath; correct?

A Yes.

Q Please state your name and business address.

A Patricia H. Pellerin, 84 Deerfield Lane,
Meriden, Connecticut 06420.

Q By whom are you employed and what's your job?

A I'm employed by AT&T Services, Inc., as a
Associate Director, Wholesale Regulatory.

Q Did you prepare and cause to be filed in this

1 matter direct testimony consisting of 95 pages with
2 eight exhibits attached?

3 **A** Yes.

4 **Q** Do you have any corrections to your direct
5 testimony?

6 **A** Yes, I do.

7 **Q** What are they?

8 **A** The first one is on page 10, at line 20.
9 Should delete, "The funds remain in CA's bank account
10 and." And the second correction is on page 21, lines
11 2 and 3, should delete at the end of line 2 from the
12 comma "and CA has no," and then on line 3 delete the
13 remain of that first sentence, "obligation to notify
14 AT&T Florida when it does so." And that's all the
15 corrections I have.

16 **Q** Did you also prepare and cause to be filed in
17 this matter rebuttal testimony consisting of 42 pages
18 with 11 exhibits attached?

19 **A** Yes.

20 **Q** Do you have any corrections to your rebuttal
21 testimony?

22 **A** No.

23 **Q** Does the testimony provided in your direct and
24 rebuttal remain true today?

25 **A** Yes.

1 **Q** All right. Do you have a summary of your
2 testimony for us?

3 **A** Yes, I do.

4 **Q** Please proceed.

5 **A** Good morning. We're here to arbitrate an
6 interconnection agreement with Communications Authority,
7 a new entrant in the local exchange market in Florida.

8 I address a number of issues in my testimony,
9 but I will focus on just a few here: The handling of
10 disputed amounts, term of the ICA, and pricing.

11 There were several interrelated issues that
12 deal with disputed amounts, the most important of which
13 is the need for disputed amounts to be placed into an
14 escrow account pending resolution of the dispute. AT&T
15 has had to write off hundreds of millions of dollars in
16 uncollectibles under ICAs in the last five years. As a
17 result, AT&T now includes escrow provisions in its ICAs
18 so that when a dispute is resolved in AT&T's favor, the
19 money is there to pay AT&T what it is due.

20 Mr. Ray states in his rebuttal testimony that
21 AT&T's losses are its own fault for not having, quote,
22 reasonable institutional financial loss prevention
23 controls, close quote. And while I disagree with his
24 characterization, that is precisely what AT&T's escrow
25 language is, a reasonable institutional loss prevention

1 control.

2 AT&T's escrow language should be adopted
3 because it provides both parties with needed
4 protection. AT&T is protected against uncollectibles
5 when a dispute is resolved in AT&T's favor, while
6 exempting several categories of disputes, such as
7 disputes over small amounts from the escrow
8 requirement. And CA is protected because the money is
9 held by an independent third party and not by AT&T
10 while the dispute is pending.

11 As for the term of the ICA, while AT&T
12 prefers a two-year term, AT&T is willing to accept the
13 three-year term CA offered during negotiations. The
14 industry is changing more rapidly than ever, and AT&T
15 should not be locked into the terms of this ICA until
16 2020, which is what CA now proposes. And while the
17 parties may agree to an ICA amendment that is not based
18 on a change in law, AT&T cannot compel CA to negotiate
19 such an amendment.

20 Mr. Ray also claims that CA needs a five-year
21 term because AT&T will limit the time CA's ICA is
22 available for adoption by other CLECs. That is a red
23 herring since CA will not be affected by the length of
24 time its own ICA is available to competing carriers.
25 AT&T's proposed three-year term is very reasonable in

1 the current telecommunications environment.

2 Finally, the issue of pricing. AT&T's
3 proposed prices have either been approved by the
4 Commission as TELRIC based or they are not required to
5 be priced based on TELRIC. CA has proposed rates more
6 to its liking, suggesting that AT&T should be bound by
7 rates CA claims are similar to Verizon's rates. Of
8 course, Verizon's rates are entirely irrelevant to
9 AT&T. In fact, CA has admitted that different carriers
10 have different costs, and CA provided no support for
11 its proposed prices. The Commission should adopt
12 AT&T's proposed prices for CA's ICA. Thank you.

13 **MR. FRIEDMAN:** Commissioner Brisé, AT&T
14 Florida moves for admission into the record of
15 Ms. Pellerin's direct and rebuttal testimony.

16 **COMMISSIONER BRISÉ:** Okay. We will move
17 Ms. Pellerin's direct and rebuttal testimony into the
18 record, seeing no objections.

19 **MR. TWOMEY:** No objection.

20 **COMMISSIONER BRISÉ:** All right. It may be
21 moved into the record.

1 **I. INTRODUCTION**

2 **Q. STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

3 A. My name is Patricia H. Pellerin. I am employed by AT&T Services, Inc., an authorized
4 agent for the AT&T incumbent local exchange company subsidiaries (including AT&T
5 Florida), as an Associate Director – Wholesale Regulatory. My business address is 84
6 Deerfield Lane, Meriden, CT 06450.

7 **Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.**

8 A. I attended Middlebury College in Middlebury, Vermont and received a Bachelor of
9 Science Degree in Business Administration, magna cum laude, from the University of
10 New Haven in West Haven, Connecticut. I have held several assignments in Network
11 Engineering, Network Planning, and Network Marketing and Sales since joining the
12 former AT&T Connecticut in 1973.¹ From 1994 to 1999 I was a leading member of the
13 wholesale marketing team responsible for AT&T Connecticut's efforts supporting the
14 opening of the local market to competition in Connecticut. I assumed my current
15 position in April 2000.

16 **Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?**

17 A. As Associate Director – Wholesale Regulatory, I am responsible for providing regulatory
18 and witness support relative to various wholesale products and pricing, supporting
19 negotiations of local interconnection agreements ("ICAs") with competitive local
20 exchange carriers ("CLECs") and Commercial Mobile Radio Services ("CMRS" or

¹ I was previously employed by The Southern New England Telephone Company ("SNET"), d/b/a AT&T Connecticut. Effective October 24, 2014, ownership of SNET was transferred to Frontier Communications Corporation.

1 “wireless”) carriers, participating in regulatory and judicial proceedings, and guiding
2 compliance with the Federal Telecommunications Act of 1996 (“1996 Act” or “Act”) and
3 its implementing rules.

4 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE STATE REGULATORY**
5 **COMMISSIONS?**

6 A. Yes. I have filed testimony and/or appeared in regulatory proceedings in many of the
7 states where AT&T incumbent local exchange carriers (“ILECs”) provide local service,
8 including Florida.

9 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

10 A. BellSouth Telecommunications, LLC d/b/a AT&T Florida, which I will refer to as AT&T
11 Florida.

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

13 A. I will discuss AT&T Florida’s positions on arbitration issues related to General Terms
14 and Conditions (“GT&Cs”), interconnection, local number portability, resale, and pricing
15 as reflected in Communications Authority Inc.’s (“CA”) petition for arbitration and CA’s
16 position statements filed in Exhibit B (“Comments”) to its petition. This includes Issues
17 11, 13-27, 29-30, 32, 35-37, 42-43, 45, 60-61, and 66.

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

19 A. Yes. I have the following exhibits:

20 Exhibit PHP-1 Interconnection Agreement²

² The ICA attached to my testimony includes the GT&Cs and all attachments that will comprise the final ICA that will be executed by the parties. Language in bold underline font is AT&T Florida’s proposed language to

1	Exhibit PHP-2	Performance Metrics – Mean Time to Deliver Invoices
2	Exhibit PHP-3	CA Response to AT&T Florida Interrogatory No. 13
3	Exhibit PHP-4	Performance Metrics – Percent Missed Installation
4		Appointments
5	Exhibit PHP-5	Performance Metrics – Order Completion Interval
6	Exhibit PHP-6	CA Response to Staff Interrogatory No. 7
7	Exhibit PHP-7	CA Response to Staff Interrogatory No. 8
8	Exhibit PHP-8	CA Response to Staff Interrogatory No. 9

9 **II. DISCUSSION OF ISSUES**

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

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

14 **Q. WHY IS THE DEFINITION OF THE TERM “BILL DUE DATE” IMPORTANT?**

15 A. “Bill Due Date” means the date by which payment must be made to be considered timely.
16 Numerous other provisions of the ICA dictate the subsequent actions if payment is not
17 made by the “Bill Due Date,” *e.g.*, GT&C sections 11 (Billing and Payment of Charges)
18 and 12 (Nonpayment and Procedures for Disconnect). Thus, the Bill Due Date is
19 important because, for example, late fees and interest are assessed if payment is not
20 received by the Bill Due Date. Consequently, the Bill Due Date must be a readily
21 ascertainable date, not subject to uncertainty, that will facilitate administration of the ICA
22 and minimize disputes.

which CA objects. Language in bold italics font is CA’s proposed language to which AT&T Florida objects.
Language in normal font is agreed.

1 **Q. WHAT ARE THE COMPETING PROPOSALS FOR THE DEFINITION OF**
2 **“BILL DUE DATE”?**

3 A. AT&T Florida proposes that the Bill Due Date be 30 days after the date of the bill. CA
4 proposes that the Bill Due Date be the later of that date or 20 days after the billed party
5 receives the bill.

6 **Q. WHICH PARTY’S PROPOSAL IS SUPERIOR?**

7 A. AT&T Florida’s. The Bill Due Date should be 30 calendar days from the date of the bill.
8 This is a reasonable period of time for the billed party to render payment and is
9 straightforward to administer. Establishing the Bill Due Date based on when a bill is
10 received, as CA proposes, would require the billing party to obtain and verify proof of
11 receipt in order to know when each bill was due. This would require a substantial
12 revamping of AT&T Florida’s billing systems, which treat payments from all other
13 carriers in Florida as past due if they are not made by the next bill date, *i.e.*, within 30
14 days of the bill date. CA’s language adds an additional administrative burden in that it
15 would require the billing party to track the date the bill was received and compare it to 30
16 calendar days from the bill date to determine which is later. CA’s proposal complicates
17 the billing process unnecessarily, would impose system modification costs on AT&T
18 Florida that CA has not offered to pay, and is likely to lead to disputes.

19 **Q. CA CLAIMED IN ITS COMMENTS³ THAT AT&T FLORIDA HAS A HISTORY**
20 **OF FAILING TO SEND TIMELY BILLS. HOW DO YOU RESPOND?**

³ When I refer to CA’s Comments, I mean the comments on each issue that CA included in Exhibit B to its Petition for Arbitration.

1 A. AT&T Florida is subject to a performance measure regarding the timeliness of its
2 invoices to CLECs as compared to its retail customers. I have attached a copy of this
3 measure as Exhibit PHP-2. AT&T Florida will be subject to financial payments to CA if
4 AT&T Florida fails to transmit its bills to CA in the same or less time than it transmits
5 comparable retail bills. As the Commission found when it decided a similar arbitration
6 issue some years ago in a decision I discuss below, this fully accommodates CA's stated
7 concern about the timeliness of bills.

8 In responding to question 13 of AT&T Florida's First Set of Interrogatories
9 (Exhibit PHP-3), CA was not able to identify any circumstance in the last three years for
10 which the Commission or any other body found that AT&T Florida did not send timely
11 bills. Instead, CA cited to the experience of Terra Nova Telecom and a small handful of
12 problems CA alleges Terra Nova had in receiving bills by mail. Terra Nova did not have
13 to escalate these matters to the Commission because AT&T Florida promptly sent
14 duplicate bills via email once Terra Nova asked for them. CLECs that elect to receive
15 their bills by snail mail must expect that there will sometimes be delays or lost bills, just
16 as we all experience from time to time with our personal mail. However, that does not
17 mean that the billing party, in this case AT&T Florida, has failed to send the bill on time
18 or is otherwise at fault for the delivery timing. The bill due date should not be based on
19 when a bill is actually received.

20 **Q. HAS THE FLORIDA COMMISSION PREVIOUSLY DECIDED AN ISSUE**
21 **SIMILAR TO ONE PRESENTED HERE?**

22 A. Yes, and its decision strongly supports AT&T Florida's position. Docket No. 040130-TP
23 was an ICA arbitration between a group of Joint Petitioners and BellSouth. One issue in

1 the case was whether the time period for review and payment of bills “should be based
2 upon the date bills are issued (by BellSouth), or whether it should be based on the date
3 bills are received.” Order No. PSC-05-0975-FOF-TP (Oct. 11, 2005), at 59. Like CA
4 here, the Joint Petitioners contended that the bill due date should be based on the date
5 bills are received, in part because BellSouth was supposedly untimely in posting or
6 delivering bills. *Id.*

7 The Commission rejected the Joint Petitioners’ position and ruled that the date for
8 bill payment should be based on the date bills are issued, and not on the date they are
9 received. Several considerations led the Commission to this conclusion, and those
10 considerations apply equally here:

11 First, the Commission noted that this is a “‘parity’ issue” (*id.* at 62), and found
12 that “BellSouth’s SQM performance results indicate that, on average, BellSouth is
13 delivering bills to its wholesale customers at ‘parity’ with its own retail customers” (*id.* at
14 63-64). That is still the case.⁴

15 Second, the Commission stated, “Although the Joint Petitioners’ proposal appears
16 to introduce a fixed level of certainty to the bill review and payment timeframe, we find
17 that the practical implication could instead result in a degree of uncertainty.” *Id.* at 63.
18 Here, CA’s proposal would inevitably result in uncertainty, because under that proposal,
19 payment of a bill more than 30 days after the date of the bill would require a
20 determination whether the bill was or was not paid within 20 days of receipt.

⁴ As compared to the time to deliver retail bills in 2014, AT&T Florida consistently delivered CLECs’ bills in less time – for interconnection, every month; for UNEs, 11 months out of 12; and for resale, 11 months out of 12.

1 Accordingly, the Commission concluded: “We find BellSouth shall not be
2 ordered to make substantive changes to its billing systems on behalf of the Joint
3 Petitioners, and at its own expense, in order to exceed ‘parity’ performance.” *Id.* at 64.
4 Here, too, AT&T Florida should not be required to make substantive changes to its
5 billing systems on behalf of CA.

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

7 A. The Commission should adopt AT&T Florida’s language requiring bills to be paid within
8 30 days of the bill date and reject CA’s proposed language that would define the Bill Due
9 Date based on the later of that date or 20 days from receipt.

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

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

14 **Q. WHAT IS THE PURPOSE OF LATE PAYMENT CHARGES?**

15 A. Late payment charges (“LPCs”) are assessed when the billed party does not pay on time.
16 The purpose of LPCs is to encourage prompt payment.

17 **Q. SHOULD LPCS APPLY TO ALL BILLED AMOUNTS NOT PAID ON TIME,**
18 **INCLUDING DISPUTED AMOUNTS?**

19 A. Yes. LPCs should apply to any charges not paid by the bill due date. This does not mean
20 that CA will actually wind up paying LPCs on disputed amounts when the dispute is
21 resolved in CA’s favor. Rather, for those charges that CA disputes, LPCs will accrue
22 during the pendency of the dispute and will be credited to CA if the dispute is resolved in
23 CA’s favor (GT&C section 11.13.1). If the dispute is resolved in AT&T Florida’s favor,

1 the accrued LPCs would be paid to AT&T Florida (GT&C sections 11.13.3 and 11.13.4).
2 (See Issue 23a).

3 CA proposes that LPCs not apply to disputed amounts. This would allow CA to
4 pay late at will and to avoid LPCs simply by disputing the bill. Moreover, CA's language
5 limiting the applicability of LPCs to undisputed charges is inconsistent with other ICA
6 language to which the parties have agreed. For example, the parties have agreed that
7 section 6.13.7 of the Network Interconnection attachment ("Net. Int.") will state: "Late
8 payment charges [and interest] will continue to accrue on the Disputed Amounts while
9 the dispute remains pending." (See Issue 43, where the dispute centers on whether
10 interest may apply in addition to LPCs).

11 **Q. HAS THE COMMISSION PREVIOUSLY ADDRESSED THE QUESTION**
12 **WHETHER LPCS SHOULD APPLY TO DISPUTED AMOUNTS?**

13 A. Yes. The Commission has ruled in two arbitration decisions that LPCs apply to disputed
14 amounts. First, in Order No. PSC-01-2017-FOF-TP, issued October 9, 2001 in Docket
15 No. 001797-TP, the CLEC, like CA here, argued that LPCs should not apply to disputed
16 amounts. The Commission rejected that argument and held (at p. 118), "Where the
17 dispute is resolved in favor of BellSouth, Covad shall be required to pay the amount it
18 owes BellSouth plus applicable late payment charges." Two years later, in Order No.
19 PSC-03-1139-FOF-TP (Oct. 13, 2003), the Commission held, "Consistent with this
20 Commission's previous findings (Docket No. 001797-TP), late payment charges shall
21 apply on disputed amounts if the dispute is ultimately resolved in favor of Verizon."

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

1 A. Consistent with its precedents, the Commission should reject CA's language that would
2 limit the application of "Late Payment Charges" to undisputed charges because 1) LPCs
3 provide an appropriate incentive for CA to pay its bills on time; 2) applying LPCs to
4 disputed amounts minimizes frivolous disputes; and 3) CA's definition is inconsistent
5 with agreed terms in the ICA and would therefore likely lead to disputes.

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

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

10 **Q. WHAT IS REMITTANCE INFORMATION, AND HOW DOES AT&T FLORIDA**
11 **USE IT WHEN IT ACCOMPANIES CA'S PAYMENT?**

12 A. CLECs typically have numerous billing account numbers ("BANs") established with
13 AT&T Florida. In a very simplistic example, this might include one BAN for resale
14 services, another BAN for local interconnection services obtained pursuant to the ICA,
15 and a third BAN for access services. The remittance information that CA supplies when
16 it pays a bill tells AT&T Florida to which BAN(s) each payment should be applied,
17 allowing CA to manage its bill payments as it chooses.

18 **Q. WHAT DIFFERENCE DOES IT MAKE IF CA DOES NOT PROVIDE**
19 **REMITTANCE INFORMATION WHEN IT PAYS A BILL?**

20 A. In many circumstances, the remittance information is the only way AT&T Florida can
21 know to what accounts payments are to be credited. For example, assume that at some
22 point in time, CA owes AT&T Florida \$10,000 for resale services obtained pursuant to
23 the ICA; \$15,000 for local interconnection services obtained pursuant to the ICA; and
24 \$25,000 for access services obtained pursuant to tariff. Assume further that with those

1 amounts owing, CA pays AT&T Florida \$35,000. AT&T Florida has no way to know
2 how to allocate that \$35,000. It could be \$10,000 to resale, \$15,000 to local
3 interconnection, and \$10,000 to access; it could be \$0 to resale, \$10,000 to local
4 interconnection, and \$25,000 to access; and so on. Consequently, CA may have fully
5 paid what it owes under the ICA, or it may be as much as \$15,000 in arrears under the
6 ICA.

7 **Q. WHY SHOULD LATE PAYMENT CHARGES APPLY IF CA DOES NOT**
8 **PROVIDE THE NECESSARY REMITTANCE INFORMATION?**

9 A. For CA to remain in control of how its payments are applied to the various BANs, as it
10 should, AT&T Florida cannot process CA's payment absent the proper remittance
11 information. CA's acknowledgement of this fact is reflected in its agreement to GT&C
12 section 11.5:

13 If the Remittance Information is not received with payment, AT&T-
14 21STATE will be unable to apply amounts paid to CLEC's accounts. In
15 such event, AT&T-21STATE shall hold such funds until the Remittance
16 Information is received. If AT&T-21STATE does not receive the
17 Remittance Information by the Bill due date for any account(s), Late
18 Payment Charges shall apply.

19 While AT&T Florida is holding CA's funds pending receipt of the remittance
20 information, ~~the funds remain in CA's bank account and~~^{JB} the bill remains unpaid. LPCs
21 properly apply to payments not made by the bill due date, including those that are late
22 because CA did not supply the remittance information. It is not clear why CA objects to
23 the statement in GT&C section 2.106 (the definition of LPCs) that LPCs apply when CA
24 does not submit the remittance information when it has agreed to that very proposition in
25 section 11.5.

1 **Q. IS THERE ANOTHER REASON THAT LATE PAYMENT CHARGES SHOULD**
2 **APPLY IF CA DOES NOT INCLUDE THE REMITTANCE INFORMATION**
3 **WITH ITS PAYMENT?**

4 A. Yes. Consider the illustration I gave above, where CA owes \$10,000 for resale services
5 obtained pursuant to the ICA; \$15,000 for local interconnection services obtained
6 pursuant to the ICA; and \$25,000 for access services obtained pursuant to tariff, and CA
7 pays \$35,000 and fails to provide the remittance information. CA is now late on \$15,000,
8 but without the remittance information, AT&T Florida has no way to know whether the
9 unpaid \$15,000 is for services provided under the ICA or for services provided pursuant
10 to tariff or part one and part the other, and since the ICA and the tariff may have different
11 LPCs, AT&T Florida has no way to know how to proceed. That is why it makes perfect
12 sense for the funds to be held and for LPCs to accrue on the entire unpaid amount until
13 AT&T Florida receives the remittance information – as CA has agreed in section 11.5.

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

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

17 **Q. PLEASE IDENTIFY THE DISAGREEMENT.**

18 A. This issue concerns the definition of “Past Due” in GT&C section 2.137. The agreed
19 portion of the definition states in part: “‘Past Due’ means when a CLEC fails to remit
20 payment for any charges by the Bill Due Date” CA proposes to insert “*undisputed*”
21 before “charges,” so that charges would not be “Past Due” if they were disputed. AT&T
22 Florida opposes that proposal.

23 **Q. HOW SHOULD THE COMMISSION ANALYZE THE DISAGREEMENT?**

1 A. The only way to properly resolve a disagreement about the definition of a term in a
2 contract is to examine the way the term is used in the contract and the consequences of
3 the competing definitions. Here, for example, the disagreement cannot be resolved by
4 trying to decide in the abstract whether or not an unpaid charge that is disputed should be
5 considered past due – because the answer in the abstract makes no difference. All that
6 matters is how the term works in the contract.

7 **Q. WHAT WOULD BE THE CONSEQUENCES UNDER THE ICA IF THE WORD**
8 **“UNDISPUTED” WERE INSERTED IN THE DEFINITION OF “PAST DUE” AS**
9 **CA PROPOSES?**

10 A. The term “Past Due” is used in only two provisions in the ICA. In those two provisions,
11 the parties have agreed that LPCs and interest charges apply to Past Due amounts (GT&C
12 sections 11.3 and 11.4, respectively). Accordingly, if CA’s proposal to insert
13 “undisputed” into the definition of “Past Due” were approved, the consequence would be
14 that LPCs and interest would not apply to disputed amounts.

15 **Q. SHOULD LPCS AND INTEREST APPLY TO DISPUTED AMOUNTS?**

16 A. Yes. Billed Amounts that are not paid by the Bill Due Date should be subject to LPCs
17 for the reasons I gave in connection with Issue 13a(i). And such amounts should also be
18 subject to interest for the same reasons. Once a dispute is resolved, late payment and
19 interest charges will be paid to the billing party or credited to the billed party depending
20 on resolution of the dispute. CA’s language would improperly allow CA to pay late at
21 will and to avoid late payment and interest charges by disputing the bill.

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

1 A. The Commission should reject CA's language that would limit the definition of "Past
2 Due" to undisputed charges not paid by the bill due date.

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

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

6 **Q. WHAT IS THE PARTIES' DISPUTE REGARDING THE DEFINITION OF THE**
7 **TERM "UNPAID CHARGES"?**

8 A. The disputed definition of "Unpaid Charges" looks like this:

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

13 Thus, CA proposes to limit "Unpaid Charges" to undisputed charges.

14 **Q. WHAT IS WRONG WITH CA'S PROPOSAL TO INSERT THAT WORD?**

15 A. As I explained above, the way to determine how a term should be defined in a contract is
16 by examining how that term is used in the document. The term "Unpaid Charges" is used
17 in three provisions in the ICA. As I will show, it would make no sense, in light of the
18 way the term is used in those provisions, to include the word "undisputed" in the
19 definition. Specifically:

20 1.) Agreed language in GT&C section 11.9 states:

21 If Unpaid Charges are subject to a billing dispute between the Parties, the
22 Non-Paying Party must, prior to the Bill Due Date, give written notice to
23 the Billing Party of the Disputed Amounts and include in such written
24 notice the specific details and reasons for disputing each item listed in
25 Section 13.4 below.

26 That provision obviously assumes that Unpaid Charges may or may not be disputed.

27 Consequently, the provision would be rendered nonsensical if Unpaid Charges were

1 defined in such a way as to exclude disputed charges, so CA's proposal to define the term
2 in that fashion is directly inconsistent with what CA has agreed to in section 11.9.

3 2.) Agreed language in GT&C section 12.4 states:

4 12.4 If the Non-Paying Party desires to dispute any portion of the
5 Unpaid Charges, the Non-Paying Party must complete all of the
6 following actions not later than fifteen (15) calendar days
7 following receipt of the Billing Party's notice of Unpaid Charges:

8 12.4.1 notify the Billing Party in writing which portion(s) of the
9 Unpaid Charges it disputes, including the total Disputed
10 Amounts and the specific details listed in Section 13.4
11 below of this Agreement, together with the reasons for its
12 dispute; and

13 12.4.2 pay all undisputed Unpaid Charges to the Billing Party; and

14 Like section 11.9, those provisions obviously assume that Unpaid Charges may or may
15 not be disputed. So, again, the provisions would be rendered nonsensical if Unpaid
16 Charges were defined in such a way as to exclude disputed charges.

17 3.) Finally, GT&C section 12.6 uses the term "Unpaid Charges" twice, and it
18 would make no sense in either instance for the definition of that term to include the word
19 "undisputed" – though for different reasons. Generally, section 12.6 sets forth certain
20 consequences for specified failures of the Non-Paying Party. The first enumerated failure
21 (in agreed section 12.6.1) is a failure to "pay any undisputed Unpaid Charges in response
22 to the Billing Party's discontinuance Notice." Since the word "undisputed" is already
23 included in 12.6.1, the inclusion of the same word in the definition of "Unpaid Charges"
24 would, in this instance, be redundant.

25 Section 12.6.2 is disputed (Issue 23(c)). AT&T Florida proposes that it identify
26 as a failure by the Non-Paying Party a failure to "deposit the disputed portion of any

1 Unpaid Charges into an interest bearing escrow account that complies with all of the
2 terms set forth in Section 11.10 above within the time specified in Section 12.2 above.”
3 CA opposes this language – as well as all other provisions relating to escrow. For present
4 purposes, however, the important point is that if AT&T Florida wins the escrow issue, so
5 that its proposed section 12.6.2 is included in the ICA, it is explicit and obvious that the
6 charges that are the subject of section 12.6.2 – the charges to be deposited in escrow – are
7 disputed charges. Thus, the whole provision would be rendered nonsensical if “Unpaid
8 Charges” were limited to undisputed charges.

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

10 A. The Commission should reject CA’s proposal to include the word “undisputed” in the
11 definition of “Unpaid Charges.” The reason for this has nothing to do with any
12 substantive disagreement between the parties. Rather, the reason is that when one looks
13 at the way the term “Unpaid Charges” is used in the ICA, it is undeniable that CA’s
14 proposal would serve no defensible purpose and would turn perfectly sensible contract
15 provisions on which the parties have agreed into nonsense.

16 **ISSUE 13d: SHOULD LATE PAYMENT CHARGES APPLY ONLY TO UNDISPUTED**
17 **CHARGES?**

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

19 **Q. CA PROPOSES THAT LATE PAYMENT AND INTEREST CHARGES SHOULD**
20 **NOT APPLY TO DISPUTED AMOUNTS. WHAT IS YOUR RESPONSE?**

21 A. Late payment and/or interest charges should apply to *all* unpaid amounts. As I explained
22 above in connection with Issue 13a(i), and as the Commission has twice held in
23 connection with LPCs, such late fees properly accrue on any amount not paid on time,

1 including charges subject to a dispute. Once a dispute is resolved, late payment and
2 interest charges will be paid to the billing party or credited to the billed party depending
3 on resolution of the dispute. With the revisions CA has proposed to the billing and
4 payment language in GT&C section 11, it does not appear that CA would ever pay LPCs
5 on any amounts it disputed – even when the dispute is resolved against CA. CA should
6 not be permitted to pay late at will and avoid late payment and interest charges by
7 disputing the bill.

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

9 A. The Commission should reject CA's language that would limit the application of late
10 payment and/or interest charges to undisputed amounts.

11 **ISSUE 14a: SHOULD THE GT&Cs STATE THAT THE PARTIES SHALL PROVIDE**
12 **EACH OTHER LOCAL INTERCONNECTION SERVICES OR**
13 **COMPONENTS AT NO CHARGE?**

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

15 **Q. WHAT LANGUAGE IS IN DISPUTE FOR THIS ISSUE?**

16 A. CA proposes to include the following language in GT&C section 5.1:

17 *Each party shall bear all costs of local interconnection facilities on its*
18 *side of the Point of Interconnection ("POI"), and neither party shall*
19 *charge the other party non-recurring or monthly recurring charges*
20 *associated with local interconnection services or components located at*
21 *the POI or on the billing party's side of the POI.*

22 AT&T Florida objects to the inclusion of this language in the GT&Cs.

23 **Q. WHAT IS AT&T FLORIDA'S OBJECTION?**

24 A. Part of CA's language is unnecessary and potentially confusing, while the remainder is
25 unclear.

1 **Q. PLEASE EXPLAIN.**

2 A. The main thrust of CA's language is that each party is responsible for the costs of
3 interconnection facilities on its side of the Point of Interconnection ("POI"). AT&T
4 Florida agrees with that. However, the ICA already makes this very clear – and it does so
5 in the portion of the ICA where such matters are appropriately addressed, namely, the
6 Network Interconnection Attachment. Specifically, the definition of "POI" in Net. Int.
7 section 2.26 states that the POI "serves as a demarcation point between the facilities that
8 each Party is physically and financially responsible to provide." Similarly, Net. Int.
9 section 3.2.2 states: "[u]nless otherwise provided in this Attachment, each Party is
10 financially responsible for the provisioning of facilities on its side of the negotiated
11 POI(s)." At a minimum, it is unnecessary to repeat the point in the GT&Cs. Beyond
12 that, it is generally a bad idea for two portions of a contract to make essentially the same
13 point with different language, because that can lead to problems of interpretation and
14 confusion.

15 **Q. WHAT PORTION OF CA'S PROPOSED LANGUAGE IS UNCLEAR?**

16 A. It is not clear what is meant by "local interconnection services or components" or what
17 would be "located at the POI," as opposed to being on one side of the POI or the other.
18 Though not entirely clear, it appears that CA's language is intended to align with its
19 position that there should be no nonrecurring charges to install interconnection trunks or
20 revise a due date (Issues 66 and 14b(ii)), or for multiplexing (Issue 66), or, for example,
21 for Local Channel-Dedicated-DS1 (Issue 66). These and related pricing issues are more
22 appropriately addressed elsewhere and should not be duplicated here.

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

2 A. The Commission should reject CA's additional language because it is both unnecessary
3 and inappropriate.

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

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

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

10 **Q. PLEASE EXPLAIN THE PARTIES' DISPUTE REGARDING NETWORK**
11 **INTERCONNECTION SECTION 4.6.4.**

12 A. I will begin by explaining what that provision covers. Net. Int. section 4.6 addresses
13 trunk servicing, in other words, adjusting the sizing of working trunk groups (either up or
14 down) based on over- or under- utilization. For example, if a trunk group is
15 underutilized, section 4.6.3.2 allows either party to initiate a request to downsize the
16 trunk group to a more efficient level. If there is a question about the appropriateness of a
17 request to downsize a trunk group, the ASR will be placed in held status while the parties
18 hold a planning meeting to discuss it. Although the parties agree to expedite this
19 discussion, it is possible that resolution may be delayed. In the event a trunk servicing
20 order is in held status more than two business days, AT&T Florida's language would
21 require an ASR supplement to establish a new due date that accommodates the delay.
22 CA objects to such a requirement and instead proposes that a supplemental ASR to
23 change the due date be optional. This is the first of two disagreements concerning Net.
24 Int. section 4.6.4.

1 **Q. WHY SHOULD A SUPPLEMENTAL ASR TO CHANGE THE DUE DATE BE**
2 **REQUIRED RATHER THAN OPTIONAL?**

3 A. AT&T Florida is measured on the timeliness of the completion of local interconnection
4 trunk orders,⁵ and it is unreasonable to hold AT&T Florida to the original due date when
5 an order is on hold pending ongoing discussion about the particulars of the order itself.

6 **Q. DID CA EXPLAIN ITS POSITION IN ITS COMMENTS?**

7 A. No. CA simply referred to its Comments for Issue 14(a), which are not relevant to the
8 issue of ASR due dates.

9 **Q. WHAT IS THE SECOND DISAGREEMENT CONCERNING NET. INT.**
10 **SECTION 4.6.4?**

11 A. CA proposes language that would prohibit AT&T Florida from charging for ASRs related
12 to ordering, rearranging or disconnecting local interconnection trunks. AT&T Florida
13 opposes that language.

14 **Q. WHY SHOULDN'T AT&T FLORIDA BE REQUIRED TO PROCESS CA'S ASRS**
15 **FOR FREE, AS CA PROPOSES?**

16 A. AT&T Florida incurs costs when it processes ASRs, and CA's language would
17 unreasonably require AT&T Florida to bear those costs. As the "cost causer," CA should
18 be fully responsible for such costs and should pay the full amount of all applicable non-
19 recurring charges. Furthermore, CA's language is inconsistent with language to which it
20 agreed in section 1.7.4 of the Pricing Schedule, which states: "CLEC shall pay the
21 applicable service order processing/administration charge for each service order

⁵ I have provided the relevant performance metrics as Exhibit PHP-4 (Percent Missed Installation Appointments) and Exhibit PHP-5 (Order Completion Interval).

1 submitted by CLEC to AT&T-21STATE to process a request for installation,
2 disconnection, rearrangement, change, or record order.” This language in the Pricing
3 Schedule applies to CA’s trunk orders, just as it does to every other service order.

4 **Q. DID CA’S COMMENTS JUSTIFY ITS PROPOSAL FOR FREE PROCESSING**
5 **OF ASRs?**

6 A. No. As with its position concerning supplemental ASRs, CA simply referred to its
7 Comments for Issue 14(a), which are not relevant to this disagreement.

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

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

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

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

19 **Q. DOES CA AGREE TO INCLUDE IN ITS COMMERCIAL GENERAL**
20 **LIABILITY POLICY COVERAGE FOR EXPLOSION, COLLAPSE AND**
21 **UNDERGROUND DAMAGE?**

22 A. Not entirely. CA seeks to limit its obligation to obtain such coverage by qualifying that it
23 is only required if CA will “engage in such work.”

24 **Q. WHY DOES AT&T FLORIDA OBJECT TO THIS LIMITATION?**

1 A. Any assertion by CA that it will not “engage in such work” cannot be verified or
2 enforced. The ICA provides CA with the ability to engage in such work, ^{JB} and ~~CA has no~~
3 ~~obligation to notify AT&T Florida when it does so.~~ If, for example, a CA representative
4 goes into a single manhole, which is necessarily underground, it is engaging in “such
5 work” and is exposing AT&T Florida to risk. It is unreasonable for the ICA to obligate
6 AT&T Florida to bear the risk of the hazards set forth in GT&C section 6.2.2.14 because
7 CA was permitted to exclude them from its insurance policy.

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

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

11 **ISSUE 16: WHICH PARTY’S INSURANCE REQUIREMENTS ARE APPROPRIATE**
12 **FOR THE ICA WHEN COMMUNICATIONS AUTHORITY IS**
13 **COLLOCATING?**

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

15 **Q. WHAT IS THE PARTIES’ DISAGREEMENT ABOUT INSURANCE**
16 **REQUIREMENTS?**

17 A. Agreed language in GT&C section 6.2.2 provides that CA will maintain Commercial
18 General Liability insurance covering “liability arising from premises, operations,
19 personal injury, products/completed operations, and liability assumed under an insured
20 contract (including the tort liability of another assumed in a business contract).” The
21 amount of coverage CA must maintain depends on whether CA is or is not collocated on
22 AT&T Florida’s premises. The parties are in full agreement on the coverage limits in the
23 situation where CA is not collocated. The disagreement concerns what the appropriate
24 amounts for various categories of coverage should be in the situation where CA is

1 collocated. The disagreements are displayed in the table below. The table shows the
2 coverage items that are in dispute and, for each item, the coverage amount proposed by
3 AT&T Florida and the coverage amount proposed by CA. Again, this is for the situation
4 where CA is collocated on AT&T Florida's premises.

Coverage Provision	AT&T Florida	CA
General Aggregate Limit	\$10,000,000	\$2,000,000
Each Occurrence	\$5,000,000	\$2,000,000
Personal Injury and Advertising Injury	\$5,000,000	\$2,000,000
Products/Completed Operations Aggregate limit	\$10,000,000	\$2,000,000
Damage to Premises Rented to you (Fire Legal Liability)	\$2,000,000	\$500,000

5

6 **Q. BEFORE YOU DISCUSS COVERAGE LIMITS, WHY IS IT IMPORTANT FOR**
7 **THE PARTIES TO BE INSURED AT ALL?**

8 A. Commercial General Liability ("CGL") insurance protects business owners against
9 claims of liability for bodily injury, property damage, and personal and advertising injury
10 (slander and false advertising). Premises/operations coverage pays for bodily injury or
11 property damage that occurs on the insured's premises or as a result of its business
12 operations. Products/completed operations coverage pays for bodily injury and property
13 damage that occurs away from the insured's business premises and is caused by the
14 insured's products or completed work. CLECs and ILECs in the telecommunications
15 industry have contact with the general public, and have access to secure buildings and
16 expensive equipment. It is necessary for both parties in the contractual relationship to

1 carry the adequate amount of liability insurance to insulate themselves, as well as the
2 other party, against the financial consequences of insurable events, if and when they
3 occur.

4 **Q. ARE THE LIMITS THAT AT&T FLORIDA IS PROPOSING CONSISTENT**
5 **WITH INDUSTRY PRACTICE?**

6 A. Yes. Virtually all of the dozens of ICAs that AT&T Florida has negotiated with CLECs
7 and that this Commission has approved in recent years contain the insurance limits that
8 AT&T Florida is proposing here.⁶

9 **Q. APART FROM THAT, WHY ARE THE LIMITS AT&T FLORIDA IS**
10 **PROPOSING MORE REASONABLE THAN THE LIMITS CA IS PROPOSING?**

11 A. The limits CA is proposing are simply inadequate to cover the possible losses. The mere
12 presence of electronic equipment in a central office has the potential to cause a major fire
13 and millions of dollars in damage, yet CA proposes only \$500,000 in coverage. CA
14 proposes to care for the potential for serious personal injury with only \$2 million
15 insurance, despite the high risk associated with personal injury damages. CA's proposal
16 for only \$2 million in aggregate insurance coverage is very low and can easily be eroded
17 by unrelated claims. The aggregate is the most an insurance company will pay out in a
18 policy year, no matter how many claims are submitted or how extensive the damage. To
19 put this in perspective, most prudent homeowners will carry umbrella liability insurance
20 of \$1 million or more in addition to their home and auto insurance liability coverage.
21 AT&T Florida is obligated to permit CA to come onto its premises, and CA's very

⁶ There are some relatively recent ICAs that were adoptions of earlier vintage ICAs in which the insurance terms and conditions are less comprehensive than AT&T Florida proposes today, but many of those contain the minimum aggregate limit of \$10 million.

1 presence puts AT&T Florida at risk of damages. AT&T Florida's insurance levels are
2 proportional to the risk CA imposes on AT&T Florida.

3 **Q. CAN YOU DEMONSTRATE THAT SOME OF THE COVERAGE LIMITS CA IS**
4 **PROPOSING ARE TOO LOW IN LIGHT OF THE LIMITS CA HAS AGREED**
5 **TO IN THE SITUATION WHERE IT IS NOT COLLOCATING?**

6 A. Yes. As I said, there is no disagreement about the insurance limits in the event that CA is
7 not collocating. Here is the same table I displayed above, but with a column added on the
8 right showing the agreed limits for the situation where CA is not collocating:

Coverage Provision	AT&T Florida	CA	If not collocating (agreed)
General Aggregate Limit	\$10,000,000	\$2,000,000	\$2,000,000
Each Occurrence Limit	\$5,000,000	\$2,000,000	\$1,000,000
Personal Injury and Advertising Injury	\$5,000,000	\$2,000,000	\$1,000,000
Products/Completed Operations Aggregate limit	\$10,000,000	\$2,000,000	\$2,000,000
Damage to Premises Rented to you (Fire Legal Liability)	\$2,000,000	\$500,000	None

9

10 **Q. THE AGREED COVERAGE LIMITS FOR THE SITUATION WHERE CA IS**
11 **NOT COLLOCATING ARE MUCH LOWER THAN THE LIMITS AT&T**
12 **FLORIDA IS PROPOSING FOR THE SITUATION WHERE CA IS**
13 **COLLOCATING. WHY IS THAT?**

14 A. The insurable risks for CLECs that collocate are much greater than those for CLECs that
15 do not collocate, which interface less with, and so pose less risk to, AT&T Florida
16 buildings, equipment, and personnel. CA apparently recognizes this – at least to some
17 extent – because in the situation where it is collocating, it proposes higher limits for three

1 of the five categories – each occurrence; personal injury and advertising injury; and
2 damage to rented premises.

3 **Q. WHAT ABOUT THE OTHER TWO CATEGORIES – GENERAL AGGREGATE**
4 **LIMIT AND PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT?**

5 A. That is why I brought this up. In those two categories, CA proposes the same limits in
6 the situation where it is collocating as the limits the parties have agreed to in the situation
7 where CA is not collocating. This does not make sense. Given the fact that CA poses
8 much greater risks when it is collocated than when it is not, and given that CA recognizes
9 this by proposing higher limits for three of the five categories in the collocation scenario,
10 it should also be proposing higher limits for the other two categories.

11 That said, I must emphasize that I am *not* suggesting that the coverage limits CA
12 is proposing for each occurrence, personal injury and advertising injury, and damage to
13 rented premises are anywhere close to adequate, because they are not, for the reasons I
14 discussed above. I am simply making the point that just on the face of it, CA's proposal
15 is internally inconsistent.

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

17 A. The Commission should adopt AT&T Florida's Commercial General Liability coverage
18 limits.

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

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

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

1 **Q. WHAT LANGUAGE DOES AT&T FLORIDA PROPOSE REGARDING**
2 **RECOGNITION OF AN UNPERMITTED ASSIGNMENT OR TRANSFER**
3 **(ISSUE 17(ii))?**

4 A. AT&T Florida proposes to include the following language in GT&C section 7.1.1:

5 **Any attempted assignment or transfer that is not permitted is void as**
6 **to AT&T-21STATE and need not be recognized by AT&T-21STATE**
7 **unless it consents or otherwise chooses to do so for a more limited**
8 **purpose.**

9 **Q. WHEN WOULD AN ASSIGNMENT OR TRANSFER BE “NOT PERMITTED”**
10 **WITHIN THE MEANING OF SECTION 7.1.1?**

11 A. Agreed language in section 7.1.1 provides that CA may not assign its ICA without AT&T
12 Florida’s prior written consent, which will not be unreasonably withheld. If CA initiated
13 an assignment without attempting to obtain AT&T Florida’s consent, such an assignment
14 would not be permitted. An assignment would also not be permitted if CA requested
15 AT&T Florida’s consent but AT&T Florida reasonably withheld consent.

16 **Q. CAN YOU PROVIDE AN EXAMPLE OF AN ASSIGNMENT FOR WHICH**
17 **AT&T FLORIDA MIGHT REASONABLY WITHHOLD CONSENT?**

18 A. Yes. If the entity to which CA sought to make assignment did not hold a valid local
19 exchange certificate, and was not seeking such certification, it would be reasonable for
20 AT&T Florida to withhold consent for CA’s request to assign its ICA to that entity.

21 **Q. SHOULD AT&T FLORIDA BE OBLIGATED TO RECOGNIZE AN**
22 **ASSIGNMENT OR TRANSFER THAT IS NOT PERMITTED?**

23 A. No. It is plain common sense that AT&T Florida should not be obligated to recognize an
24 assignment or transfer that is not permitted. Accordingly, section 7.1.1 should include
25 AT&T Florida’s proposed language so providing.

1 **Q. DID CA EXPLAIN IN ITS COMMENTS WHY IT OBJECTS TO HAVING**
2 **SECTION 7.1.1 STATE THAT AN ASSIGNMENT OR TRANSFER THAT IS**
3 **NOT PERMITTED IS VOID AND NEED NOT BE RECOGNIZED BY AT&T**
4 **FLORIDA?**

5 A. No.

6 **Q. TURNING TO ISSUE 17(iii), SHOULD THE ICA DISALLOW ASSIGNMENT OR**
7 **TRANSFER OF THE ICA TO AN AFFILIATE THAT HAS ITS OWN ICA IN**
8 **FLORIDA?**

9 A. Yes. Just like any CLEC, a CA affiliate that has its own ICA is bound by the terms of
10 that ICA for the entire term of the ICA. During that term, the affiliate cannot, for
11 example, abandon terms or conditions of its ICA by adopting different terms or
12 conditions of another ICA, and that includes CA's ICA. It is appropriate for the ICA to
13 make clear that assignment to an affiliate that has its own ICA in Florida is not permitted.

14 **Q. DOES AT&T FLORIDA'S LANGUAGE GIVE IT THE AUTHORITY TO**
15 **UNREASONABLY PREVENT CA FROM SELLING ITS ASSETS, AS CA**
16 **CLAIMED IN ITS COMMENTS?**

17 A. No. During negotiations, AT&T Florida agreed to CA's language that AT&T Florida
18 would not unreasonably withhold consent of a requested assignment or transfer of CA's
19 ICA.

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

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

1 **ISSUE 18: SHOULD THE ICA EXPIRE ON A DATE CERTAIN THAT IS TWO**
2 **YEARS PLUS 90 DAYS FROM THE DATE THE ICA IS SENT TO**
3 **COMMUNICATIONS AUTHORITY FOR EXECUTION, OR SHOULD**
4 **THE TERM OF THE ICA BE FIVE YEARS FROM THE EFFECTIVE**
5 **DATE?**

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

7 **Q. WHAT ARE THE COMPETING PROPOSALS CONCERNING WHEN THE ICA**
8 **WILL EXPIRE?**

9 A. AT&T Florida proposes for GT&C section 8.2.1 to state that the ICA will expire on a
10 specified date – namely, the date that is two years plus 90 days after AT&T Florida sends
11 the ICA to CA for execution. CA proposes for the ICA to expire five years after the
12 Effective Date, which, as the parties have agreed in GT&C section 8.1, is ten days after
13 the ICA is approved. Thus, there are two aspects to the disagreement: whether the ICA
14 should specify a date certain on which the ICA expires, and how long the term of the ICA
15 should be.

16 **Q. WHY SHOULD THE ICA EXPIRE ON A DATE CERTAIN?**

17 A. Establishing a date certain for contract expiration eliminates any possible confusion
18 regarding exactly when the ICA expires, which is important in administering the ICA, not
19 only for CA, but also for CLECs interested in adopting CA's ICA pursuant to section
20 252(i) of the 1996 Act. It is very simple to look at the ICA and see a specific expiration
21 date (*e.g.*, June 1, 2017), which provides clarity. If CA's ICA instead expired a specified
22 number of years from the Effective Date, as CA proposes, it would be impossible to
23 determine the expiration date just by looking at the ICA. Rather, anyone needing to
24 determine the expiration date would have to figure out the Effective Date by researching
25 when the ICA was approved, and then add the specified number of years.

1 This is particularly problematic when another CLEC is considering adopting CA's
2 ICA, and the process is further complicated when there is a sequence of ICA adoptions.
3 For example, suppose CLEC A adopts CA's ICA and CLEC B subsequently adopts
4 CLEC A's ICA. To know when CLEC B's ICA expires, one would look to CLEC A's
5 ICA – which would not provide the answer. One would have to then look back to CA's
6 ICA and, if it includes language of the sort that CA is proposing, research the Effective
7 Date. Only then could one determine the expiration date of CLEC B's ICA. This is an
8 administrative burden that can easily be avoided. With the expiration date hard-coded
9 into the ICA, anyone looking at CA's ICA (and any adopting CLECs' ICAs) will know
10 precisely when it expires.

11 **Q. WHY IS TWO YEARS AND 90 DAYS FROM WHEN THE ICA IS SENT TO CA**
12 **FOR EXECUTION, AS OPPOSED TO THE FIVE YEARS THAT CA**
13 **PROPOSES, THE APPROPRIATE TERM?**

14 A. A term that is slightly more than two years enables the parties to accommodate the
15 rapidly changing telecommunications industry should modifications to the ICA that are
16 not directly tied to a change in law be appropriate.

17 **Q. WHY DOES AT&T FLORIDA PROPOSE AN ADDITIONAL 90 DAYS BEYOND**
18 **TWO YEARS?**

19 A. The expiration date will be hard-coded into the ICA when AT&T Florida sends the ICA
20 to CA for execution. AT&T Florida's language provides for at least a two-year term by
21 building in generous leeway (*i.e.*, 90 days) to allow for the normal processing and ICA
22 approval time that is inherent in the process.

23 **Q. DID CA SEEK A FIVE-YEAR TERM DURING NEGOTIATIONS?**

1 A. No. During negotiations, the parties' disagreement was between the two years plus 90
2 days term AT&T Florida proposed (and still proposes) and a three-year term as requested
3 by CA. CA did not propose a five-year term until it filed its petition.

4 **Q. IS CA'S CURRENT PROPOSAL FOR A FIVE-YEAR AGREEMENT**
5 **REASONABLE?**

6 A. No. CA's proposal that the parties could not seek to negotiate a successor ICA for five
7 years (*i.e.*, not before the year 2020) is unreasonable and should be rejected.

8 **Q. IF AT&T FLORIDA'S PROPOSAL IS ADOPTED AND THE ICA HAS AN**
9 **EXPIRATION DATE IN 2017, HOW LIKELY IS IT THAT CA WILL NEED TO**
10 **NEGOTIATE OR ARBITRATE A NEW ICA WITH AT&T FLORIDA**
11 **STARTING IN 2017?**

12 A. It is very unlikely. Under agreed language in GT&C section 8.4, the parties can continue
13 to do business under the ICA even after the ICA expires unless one party or the other
14 serves a "Notice of Expiration." It is the norm for AT&T ILECs, including AT&T
15 Florida, to continue to operate under expired ICAs in such "evergreen" status, typically
16 for years. In my experience, which is extensive in this respect, it is very unusual for an
17 ICA to actually be terminated when or shortly after it expires. Thus, it is most likely that
18 if the Commission adopts AT&T Florida's proposal and the ICA has a hard-coded
19 expiration date in 2017, the parties will nonetheless continue to operate under the ICA for
20 years after that. But in case unanticipated circumstances arise in our rapidly evolving
21 industry that warrant a new interconnection agreement sooner, the ICA should not lock
22 the parties into the terms the Commission is arbitrating now for five years, subject only to
23 modifications for changes in law.

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

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

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

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

10 **Q. PLEASE PROVIDE THE CONTEXT FOR THIS ISSUE.**

11 A. The starting point is a basic principle of contract law provided by counsel: If a party
12 materially breaches a contract, the other party is excused from its obligation to perform
13 and may treat the contract as terminated. Counsel informs me that Florida law
14 recognizes this principle, and AT&T Florida will provide pertinent legal cites in its
15 briefs.

16 Agreed language in GT&C section 8.3.1 embodies this principle. It states that
17 either party may terminate the ICA if the other party fails to perform a material obligation
18 or breaches a material term of this agreement and fails to cure such nonperformance or
19 breach within forty-five (45) calendar days after written notice thereof. CA, however,
20 proposes to add the following language, to which AT&T Florida objects, to section 8.3.1:

21 *Neither party shall terminate this Agreement or service under this*
22 *provision if the alleged breach is disputed and the Dispute Resolution*
23 *process has been invoked but not concluded, including all appeals.*

24 **Q. PLEASE EXPLAIN AT&T FLORIDA'S OBJECTION TO THIS LANGUAGE.**

1 A. Either party needs to be able to terminate the ICA in the event of a material breach by the
2 other party. CA's proposed language would improperly obligate AT&T Florida to
3 continue operating pursuant to the ICA for a prolonged period of time notwithstanding
4 CA's material breach. For example, if the Commission concluded a formal complaint
5 (which would take months) finding that CA materially breached the ICA, CA could then
6 simply file an appeal of that decision in court to maintain the dispute in pending status
7 while the litigation worked its way through the court system, including any appeals.
8 During this protracted period of time, which could take years, CA would have no
9 obligation to cure the breach and AT&T Florida would have no recourse.

10 **Q. WOULD THE COMMISSION'S EXPEDITED DISPUTE RESOLUTION**
11 **PROCESS BE AVAILABLE TO AT&T FLORIDA, AS CA CLAIMS?**

12 A. No. The parties' ICA will include comprehensive dispute resolution provisions (GT&C
13 section 13), and the parties agreed in section 13.2.1 that the dispute resolution procedures
14 will apply "to any controversy or claim arising out of or relating to this Agreement or its
15 breach." Pursuant to the Florida Administrative Code, the Commission's expedited
16 dispute resolution process is available only for resolution of disputes *not* governed by the
17 dispute resolution provisions of the ICA.⁷ And even if the Commission's expedited
18 process were available, as I explained above CA could simply file an appeal of the
19 resulting decision to delay termination.

⁷ Rule 25-22.0365(5)(d) of the Florida Administrative Code states that a request for expedited proceeding must include: "A statement that the complainant company attempted to resolve the dispute informally and *the dispute is not otherwise governed by dispute resolution provisions contained in the parties' relevant interconnection agreement.*" (Emphasis added).

1 **Q. BUT IF AT&T FLORIDA IS PERMITTED TO TERMINATE THE ICA BASED**
2 **UPON AN ALLEGED BREACH THAT CA DISPUTES, ISN'T THERE A RISK**
3 **THAT AT&T FLORIDA WILL TERMINATE WHEN THERE SHOULD BE NO**
4 **TERMINATION?**

5 A. No. The Commission does not need to be concerned that AT&T Florida would terminate
6 an ICA if there is any *legitimate* dispute about the breach. AT&T Florida is
7 extraordinarily cautious about terminations and is mindful of the liability to which it
8 would be exposed if it terminated CA's ICA without ample cause.

9 **Q. CAN YOU TIE THAT LAST POINT TO YOUR EARLIER REFERENCE TO**
10 **THE LEGAL PRINCIPLE THAT A MATERIAL BREACH BY ONE PARTY TO**
11 **A CONTRACT PERMITS THE OTHER PARTY TO TERMINATE?**

12 A. Yes. AT&T Florida's position on this issue is consistent with the way contracts work in
13 general. Assume that two Florida companies, X and Y, are parties to a contract. X
14 determines that Y is materially breaching, and confronts Y about it. Y disputes that it is
15 in breach. X then terminates the contract, and the parties go to court with their dispute.
16 If the court determines that there was no breach and the termination was wrongful, X,
17 which wrongfully ceased performing under the contract, will be held liable for whatever
18 damages Y suffered as a result. Importantly for present purposes, Y cannot automatically
19 stop X from terminating by disputing the breach; instead, Y's dispute of the breach puts
20 X on notice that it had better be sure it is correct about the breach before it puts itself at
21 risk by terminating.

22 It should work exactly the same way under the ICA between CA and AT&T
23 Florida. If AT&T Florida is sufficiently confident that CA is in breach that it is willing to
24 risk a suit for wrongful termination by CA, then AT&T Florida should be allowed to do
25 so, just like any other party to a contract. Conversely, CA should not be able to force

1 AT&T Florida to continue to perform, possibly for years, under a contract that CA is
2 breaching merely by disputing the breach.

3 **Q. HOW SHOULD THE COMMISSION DECIDE ISSUE 19?**

4 A. The Commission should reject CA's additional language in GT&C section 8.3.1.

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

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

10 **Q. PLEASE EXPLAIN THE PARTIES' DISPUTE FOR ISSUE 20.**

11 A. The parties agree in GT&C section 8.4.6 that AT&T Florida is entitled to reject CA's
12 request to negotiate a successor ICA when CA has an "outstanding balance under this
13 Agreement." However, CA proposes to insert the word "undisputed" before "outstanding
14 balance," so that AT&T Florida would be required to negotiate with CA for a successor
15 ICA when there is an unresolved billing dispute.

16 **Q. WHY SHOULD AT&T FLORIDA BE ENTITLED TO REJECT CA'S REQUEST**
17 **TO NEGOTIATE A NEW ICA WHEN THERE IS AN OUTSTANDING**
18 **BALANCE SUBJECT TO DISPUTE?**

19 A. CA should not be permitted to negotiate a new ICA unless it has satisfied all of its
20 payment obligations pursuant to the existing ICA, including final resolution of disputed
21 amounts. CA's language would permit it to negotiate a new ICA with different terms, or
22 request adoption of another CLEC's ICA pursuant to section 252(i) of the 1996 Act, even
23 though it had an outstanding bill, by simply initiating a billing dispute.

1 **Q. CA SUGGESTED IN ITS COMMENTS THAT AT&T FLORIDA COULD**
2 **BLACKMAIL CA INTO PAYING DISPUTED CHARGES SO IT COULD**
3 **CONTINUE OPERATIONS. IS THAT TRUE?**

4 A. No. CA's statement that AT&T Florida would fail to invoke the dispute resolution
5 process or otherwise fail to cooperate with CA in resolving a billing dispute to blackmail
6 CA into paying its bill is absurd. First, it ignores CA's own right to invoke dispute
7 resolution to clear any pending billing disagreements. And second, AT&T Florida has an
8 incentive to handle billing disputes reasonably and expeditiously so that it will be paid
9 what it is owed pursuant to the ICA.

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

11 A. The Commission should reject CA's language that would permit it to negotiate a
12 successor ICA when there is an outstanding billing dispute.

13 **ISSUE 21: SHOULD COMMUNICATIONS AUTHORITY BE RESPONSIBLE FOR**
14 **LATE PAYMENT CHARGES WHEN COMMUNICATIONS**
15 **AUTHORITY'S PAYMENT IS DELAYED AS A RESULT OF ITS**
16 **FAILURE TO USE ELECTRONIC FUNDS CREDIT TRANSFERS**
17 **THROUGH THE ACH NETWORK?**

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

19 **Q. PLEASE EXPLAIN THIS DISAGREEMENT**

20 A. Under agreed language in GT&C section 11, billed amounts that are not disputed must be
21 paid by the Bill Due Date, and Past Due payments are subject to Late Payment Charges.
22 Section 11.6 identifies two methods by which the Billed Party can make payment. It may
23 pay either via electronic funds transfers through the Automated Clearing House
24 Association ("ACH") to the financial institution designated by AT&T Florida, or via
25 check.

1 Payments made by electronic funds transfers through ACH are processed
2 automatically. AT&T Florida therefore strongly prefers that CLECs use that method.
3 Indeed, AT&T Florida proposed to make payment by that method mandatory, but CA
4 declined. If CA chooses to pay by check, as agreed section 11.6 permits, a delay may
5 result that causes the payment to be late. To address that possibility, AT&T Florida
6 proposes the following language for GT&C section 11.8:

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

11 CA opposes that language.

12 **Q. WHY SHOULD THE ICA INCLUDE AT&T FLORIDA'S PROPOSED**
13 **LANGUAGE?**

14 A. Simply to makes clear that if CA does not pay electronically through the ACH network,
15 its payment may be delayed so that it is not posted by the Bill Due Date. CA has the
16 responsibility to pay its bills on time, and LPCs are appropriate any time a payment is not
17 made by the Bill Due Date. This includes when CA's payment is late because it elected
18 to make its payment via check through the U.S. mail, for example, rather than
19 electronically and the mail delivery was delayed. If CA chooses to use a payment
20 method that is less expeditious than the electronic method that is available to CA and the
21 result is non-payment by the Bill Due Date, it stands to reason that CA should be
22 responsible for the resulting LPCs, just as it is responsible for LPCs that result from other
23 causes.

1 **Q. DOES AT&T FLORIDA’S LANGUAGE PENALIZE CA FOR NOT PAYING**
2 **ELECTRONICALLY VIA THE ACH NETWORK, AS CA INDICATED IN ITS**
3 **COMMENTS?**

4 A. No. As long as AT&T Florida receives CA’s payment by the Bill Due Date, no LPCs
5 will be assessed.⁸ AT&T Florida’s language does not state that LPCs will apply if CA
6 makes a timely payment through means other than electronic transfer via ACH, *e.g.*, via
7 check.

8 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 21?**

9 A. The Commission should adopt AT&T Florida’s language that simply makes clear that if
10 CA’s payment does not arrive by the due date because of CA’s decision not to pay
11 electronically, Late Payment Charges will apply.

12 **ISSUE 22a: SHOULD THE DISPUTING PARTY USE THE BILLING PARTY’S**
13 **PREFERRED FORM OR METHOD TO COMMUNICATE BILLING**
14 **DISPUTES?**

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

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

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

19 **Q. WHAT IS THE DISAGREEMENT ABOUT BILLING DISPUTE FORMS?**

20 A. AT&T Florida proposes language for two sections of the GT&Cs that would require the
21 billed party to submit billing disputes on the Billing Party’s dispute form. First, AT&T
22 Florida proposes to include a sentence in GT&C section 11.9 that would state, “The
23 Disputing Party should utilize the preferred form or method provided by the Billing Party

⁸ CA’s payment must be immediately available to AT&T Florida (GT&C section 11.3.1), and CA must provide the remittance information (section 11.5) by the due date for payment to be considered timely.

1 to communicate disputes to the Billing Party.” Second, AT&T Florida proposes to
2 include a sentence in GT&C section 13.4 that would state, “Written Notice sent to
3 AT&T-21STATE for Disputed Amounts must be made on the ‘Billing Claims Dispute
4 Form,’” which is the form that all carriers that have ICAs with AT&T Florida currently
5 use to notify AT&T Florida of billing disputes. CA opposes AT&T Florida’s proposed
6 language.

7 **Q. WHAT IS THE BASIS FOR AT&T FLORIDA’S POSITION ON THIS ISSUE?**

8 A. Bills for services provided under an ICA can be voluminous and complex, and billing
9 disputes are frequent. In order for AT&T Florida to efficiently process the many disputes
10 it receives from numerous carriers, it is essential that all carriers use the same form –
11 AT&T Florida’s standard dispute form⁹ – which is compatible with AT&T Florida’s
12 billing and collections systems. AT&T Florida has worked successfully with other
13 carriers in the past to ensure they are using AT&T Florida’s billing dispute form properly
14 and providing the necessary data. There is no sound reason for CA to be treated
15 differently than other carriers in this respect.

16 Moreover, AT&T Florida’s proposed language requires AT&T Florida to submit
17 disputes to CA on CA’s preferred form. This even-handed approach recognizes that
18 standardization in ordering and billing processes leads to operational efficiencies that are
19 lost if the billing party has to reconcile a variety of different formats and data inputs from
20 different carriers. Standardization results in billing dispute claims being handled more

⁹ AT&T’s standard dispute form is available on its CLEC Online website:
<https://clec.att.com/clec/hb/shell.cfm?section=200&hb=507>. The “Billing Claims Dispute Form” link opens an
Excel workbook, which includes four worksheets: the data spreadsheet (“Claim Spreadsheet”), two job aids
 (“Spreadsheet Field Definitions” and “Record-Claim Types”), and a delivery guide (“Where to Send This Form”).

1 quickly and accurately than they would be if billed parties used their own idiosyncratic
2 forms.

3 **Q. CA STATED IN ITS COMMENTS THAT IT HAS SYSTEMS THAT CAN**
4 **AUTOMATICALLY SUBMIT BILLING DISPUTES, AND THAT SINCE THAT**
5 **SYSTEM PROVIDES ALL THE INFORMATION AT&T FLORIDA REQUIRES,**
6 **IT SHOULD MAKE NO DIFFERENCE WHETHER CA USES AT&T**
7 **FLORIDA’S STANDARD FORM. HOW DO YOU RESPOND?**

8 A. That simply is not correct. AT&T Florida can deal efficiently with the numerous billing
9 disputes it receives only if it receives the disputes in a consistent form. After all, if I sent
10 the Internal Revenue Service on April 15 all the information it needs to calculate my
11 taxes but used my own form, instead of the standard I.R.S. form, I don’t think the I.R.S.
12 would excuse me from the resulting fine if I said they were exalting form over function. I
13 don’t mean to suggest that AT&T Florida is akin to the government, but just as it would
14 be unmanageable for the government if individual taxpayers insisted on using their own
15 forms, so it would be unmanageable for AT&T Florida – and would cost AT&T Florida
16 time and money – if each CLEC used its own preferred method for communicating
17 billing dispute information.

18 **Q. BUT CA ASSERTS THAT IT WILL HAVE TO EXPEND “SUBSTANTIAL**
19 **EXTRA RESOURCES” IF IT IS REQUIRED TO USE AT&T FLORIDA’S**
20 **FORM. DO YOU DISAGREE?**

21 A. I will accept that CA may have to expend some additional resources – though how
22 substantial those resources may be I do not know. As a practical matter, as a new entrant
23 CA can design its process to use AT&T Florida’s dispute form from the outset; it does
24 not need to modify a current process. On the other hand, AT&T Florida would have to
25 expend resources of its own if the Commission were to allow CA to use a different

1 method to lodge billing disputes than every other CLEC in Florida. The question then
2 becomes, as between CA and AT&T Florida, which party should be required to bear a
3 cost associated with CA's dispute of an AT&T Florida bill? If we knew whether most
4 CA disputes were valid or invalid, or the amount of each party's costs, that would help
5 answer the question, but we do not have that information. Given the information the
6 Commission has, I would suggest that a reasonable answer is that since it is CA that
7 wishes to take the action, *i.e.* to dispute the bill, it is CA that should bear the cost.

8 **Q. WHY SHOULDN'T AT&T FLORIDA BE RESPONSIBLE FOR ENSURING ITS**
9 **SYSTEMS CAN ACCOMMODATE ALL OF ITS WHOLESALE CUSTOMERS'**
10 **PREFERENCES, RATHER THAN REQUIRING THE CUSTOMERS TO**
11 **CONFORM WITH AT&T FLORIDA'S REQUIREMENTS?**

12 A. When a vendor has many customers, it is the norm for the customers to conform to the
13 vendor's systems. This is true of a credit card company vis-à-vis its customers, an airline
14 vis-à-vis its customers, and a hospital with respect to its patients. The reason is obvious:
15 if a credit card company's hundreds of thousands of customers could choose their own
16 individualized means of communicating with the company, chaos would result. Likewise
17 for the airline and the hospital. And for AT&T Florida with respect to its hundreds of
18 wholesale customers – as all but one of those customers accept using AT&T Florida's
19 billing dispute form.

20 **Q. HAVE ANY OTHER STATE COMMISSIONS RECENTLY ADDRESSED THIS**
21 **ISSUE?**

22 A. Yes. AT&T Florida's affiliate AT&T Illinois arbitrated the issue with Sprint, which took
23 essentially the same position that CA takes here. The Illinois Commerce Commission
24 resolved the issue in favor of AT&T Illinois, stating, "The Commission agrees with

1 AT&T that use of the Billing Party's dispute form allows the Billing Party to more
2 quickly and accurately process disputes, which would actually benefit the Billed Party.
3 ... The Commission notes that AT&T's proposed language is party-neutral and that, to
4 the extent Sprint bills AT&T and there is a dispute, AT&T would then need to use
5 Sprint's dispute process."¹⁰ This Commission should resolve the issue in favor of AT&T
6 Florida as well.

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

10 **Affected Contract Provisions:**

11 (a) GT&C §§ 11.9 through 11.12, 11.13.2 through 11.13.4

12 (b) GT&C §§ 12.4.3, 12.4.4

13 (c) GT&C § 12.6.2

14 **Q. WHAT IS THIS ISSUE ABOUT?**

15 A. AT&T Florida proposes that if either party disputes the other's bill, the disputing party
16 must, subject to certain exceptions, deposit the disputed amount in an escrow account, so
17 that once the dispute is resolved, the escrowed funds, along with the interest those funds
18 earn, can be disbursed in accordance with that resolution. CA objects to having any
19 escrow language in the ICA.

20 **Q. WHAT IS THE PURPOSE OF AT&T FLORIDA'S ESCROW LANGUAGE?**

21 A. To ensure that if the billed party disputes a bill and the dispute is resolved in favor of the
22 billing party, there will be funds available to pay what is owed. AT&T ILECs, including

¹⁰ Arbitration Decision, Docket No. 12-0550, *SprintCom, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement With Illinois Bell Telephone Company d/b/a AT&T Illinois*, (Ill. Comm. Comm'n June 26, 2013).

1 AT&T Florida, have lost tens of millions of dollars in the following scenario: A carrier
2 disputes the ILEC's bills, sometimes with no good faith basis; the dispute is resolved a
3 year or two later in favor of the ILEC; the carrier files for bankruptcy; and the ILEC
4 ultimately must write off the wrongfully disputed amounts as uncollectible expense. If
5 the carrier is required to escrow disputed amounts, the ILEC is protected against such
6 losses.

7 **Q. CAN YOU QUANTIFY THE LOSSES THE ESCROW REQUIREMENT**
8 **PROTECTS AGAINST?**

9 A. Yes. The AT&T ILECs have written off over \$308 million in uncollectible losses under
10 ICAs in the last five years, and the AT&T ILEC in the Southeast Region has written off
11 over \$245 million in such losses in the last ten years, including over \$17 million in
12 Florida.

13 **Q. THE PARTIES HAVE AGREED TO THE DEPOSIT LANGUAGE TO BE**
14 **INCLUDED IN THE ICA. DOESN'T THAT PROVIDE ADEQUATE**
15 **ASSURANCE OF PAYMENT?**

16 A. No. While deposit provisions are certainly a critical mechanism to help protect the
17 billing party against undeserved losses, the concepts of escrow and deposit are structured
18 in AT&T Florida's proposed language to complement one another, not as alternatives.
19 Escrow provisions are designed to ensure that funds are available to pay for charges that
20 are disputed after the dispute is resolved. Deposits address the overall creditworthiness
21 of a party and are not tailored to the risk that is specific to a particular dispute. In
22 addition, the deposit amount that AT&T Florida can demand is capped, and if a carrier
23 disputes AT&T Florida's bills month after month, the maximum deposit amount will not
24 cover the amount of the dispute.

1 **Q. WHAT ARE THE KEY PROVISIONS OF AT&T FLORIDA'S PROPOSED**
2 **ESCROW LANGUAGE?**

3 A. The language requires the disputing party to deposit disputed amounts (with the
4 exception of reciprocal compensation and other exceptions I discuss below) into an
5 interest-bearing escrow account to be held by a qualifying financial institution designated
6 as a third-party escrow agent. Disbursement from the escrow account would occur upon
7 resolution of the dispute in accordance with the ICA's dispute resolution provisions. If
8 the disputing party loses the dispute, the disputed amount held in escrow would be
9 disbursed to the billing party. If the disputing party wins the dispute, it gets its money
10 back, with interest. If there is a split decision on the dispute, the billing party and the
11 disputing party will be reimbursed from the escrow account proportionately according to
12 the resolution of the dispute.

13 **Q. WHAT ARE THE EXCEPTIONS TO THE PROPOSED ESCROW**
14 **REQUIREMENT OTHER THAN DISPUTES ABOUT RECIPROCAL**
15 **COMPENSATION?**

16 A. There are three exceptions set forth in GT&C sections 11.9.1.1 – 11.9.1.3:

17 *First*, subsection 11.9.1.1 provides that the disputing party need not escrow
18 disputed amounts if the total disputed amounts do not exceed \$15,000. This exclusion
19 recognizes that if the disputed amounts are relatively small, the associated risk is
20 correspondingly small, and there is less justification for any burdens or costs associated
21 with establishing or maintaining an escrow account.

22 *Second*, subsection 11.9.1.2 provides that the disputing party does not have to
23 escrow the disputed amount if it has established 12 consecutive months of timely
24 payment history and if the total amount of its unpaid invoices does not exceed 10% of the

1 then current monthly billing to that party. This recognizes that the risk that the escrow
2 requirement seeks to protect against is reduced when the disputing party is a timely payer
3 and is disputing only a relatively small portion of its total bill.

4 *Third*, subsection 11.9.1.3 provides that if the billed party believes a billed
5 amount is incorrect because of an arithmetic or clerical error, the billed party can dispute
6 the bill by bringing the error to the billing party's attention without putting the
7 erroneously billed amount into escrow, though an escrow may be required if it is not clear
8 there was a billing error and the parties continue to disagree about the matter. This
9 exclusion recognizes that there are sometimes readily correctible errors in bills, and that
10 the billed party should be able to bring such errors to the billing party's attention without
11 escrowing the affected amounts.

12 **Q. HOW DID THE THREE EXCLUSIONS COME TO BE INCLUDED IN AT&T**
13 **FLORIDA'S PROPOSED LANGUAGE?**

14 A. The exclusions have been added over the years in order to accommodate concerns that
15 some carriers expressed about what they saw as the burdens of the escrow requirement.
16 It has been clear for many years that an escrow requirement for disputed bills is essential
17 to protect ILECs from multi-million dollar losses of the sort I have described, and
18 initially, what is now AT&T Florida's standard escrow language broadly required that
19 CLECs and CMRS providers deposit all disputed amounts in escrow, with none of the
20 exclusions we have now.

21 In response to carrier objections that they should not be burdened with an escrow
22 requirement for small disputed amounts, AT&T Florida added the \$15,000 threshold –
23 and then the related, but different, exclusion for carriers that are timely payers and that

1 are not disputing the bulk of their bills. In response to carrier objections that no escrow
2 should be required when the dispute is about a routine clerical or arithmetic error, AT&T
3 Florida added that exclusion.

4 With these exclusions, AT&T Florida's proposed escrow language achieves a
5 balance between AT&T Florida's legitimate need for protection against substantial
6 undeserved losses to CLECs and CMRS providers that dispute their bills and are then
7 unable to pay them when this Commission or a court rules that they must and, on the
8 other hand, legitimate carrier concerns about the scope and particulars of the escrow
9 requirement.

10 **Q. OTHER THAN ENSURING THAT THERE ARE FUNDS AVAILABLE TO PAY**
11 **THE BILL IF THE DISPUTE IS RESOLVED IN FAVOR OF THE BILLING**
12 **PARTY, DO THE ESCROW PROVISIONS PROVIDE ANY OTHER BENEFITS?**

13 A. Yes. The escrow requirement should discourage the assertion of frivolous billing
14 disputes. With no escrow requirement, the billed party can, in effect, make the billing
15 party its banker by submitting a dispute rather than paying its bill – and some carriers
16 have in fact done that. If the billed party is required to escrow the disputed amounts, that
17 behavior would be discouraged. I do not mean to suggest that CA would engage in such
18 machinations, but CA is a new market entrant and does not yet have a proven track
19 record. Moreover, AT&T Florida must concern itself with the likelihood that other
20 carriers will adopt CA's ICA pursuant to Section 252(i) of the 1996 Act – as should this
21 Commission.

22 **Q. IS THE COMMISSION'S EXPEDITED DISPUTE RESOLUTION PROCESS**
23 **AVAILABLE TO THE PARTIES TO RESOLVE BILLING DISPUTES?**

1 A. No. As I explained above for Issue 19, the parties' ICA will include comprehensive
2 dispute resolution provisions (GT&C section 13), and the Commission's expedited
3 dispute resolution process is only available for resolution of disputes not governed by the
4 dispute resolution provisions of the ICA.

5 **Q. EVEN IF THE EXPEDITED DISPUTE RESOLUTION PROCESS WERE**
6 **AVAILABLE, WOULD THAT BE A GOOD REASON TO REJECT AT&T**
7 **FLORIDA'S ESCROW PROPOSAL?**

8 A. No. The Prehearing Officer has discretion to decide whether the use of the expedited
9 procedure is appropriate in any given case. Thus, even if the expedited dispute resolution
10 process were available to AT&T Florida and CA (and, as I stated, I believe it is not),
11 AT&T Florida could not count on the availability of the expedited procedure in any
12 particular case. In any event, AT&T Florida would need the protection provided by an
13 escrow requirement even if the expedited procedure were available in all cases. Before a
14 petition for expedited proceeding can be filed, the Commission's Rule requires the parties
15 to try to resolve the dispute themselves. The ICA allots a minimum of 90 days for that
16 attempt (30 days initially, and then 60 days of informal dispute resolution). Then, the
17 Commission's expedited procedure – assuming it is available – allows 120 days for a
18 decision after the request for expedited proceeding is filed. Thus, even if we
19 conservatively assume that the parties move the process along briskly – so that, for
20 example, a request for expedited proceeding is made on the first permissible day – it
21 would still take at least seven months to get the dispute resolved. AT&T Florida should
22 not be exposed to the risk of seven months unpaid bills.

1 **Q. CAN YOU GIVE A SPECIFIC EXAMPLE OF THE RISK TO WHICH AT&T**
2 **ILECS HAVE BEEN EXPOSED IN THE ABSENCE OF AN ESCROW**
3 **REQUIREMENT FOR DISPUTED AMOUNTS?**

4 A. Yes. A former Florida resident named Thomas Biddix controlled two CLECs that left
5 AT&T Florida and other AT&T ILECs holding the bag to the tune of more than \$34
6 million. The two Biddix-controlled CLECs were BLC Management LLC and
7 LifeConnex Telecom LLC, each of which had an ICA with BellSouth pursuant to which
8 they did business in Florida and the other eight BellSouth states. The ICAs, typical of
9 BellSouth ICAs at the time the BLC and LifeConnex ICAs were entered, did not include
10 escrow provisions.

11 From 2008 until April 2012, the Biddix CLECs paid BellSouth next to nothing for
12 resale services BellSouth provided to them under the ICAs. Instead, they asserted bogus
13 claims for credits and discounts that they claimed offset the amounts BellSouth had
14 billed. These claims were litigated in a number of state commissions in complaint
15 actions initiated by BellSouth, which prevailed in all instances. As a result, the state
16 commissions of Kentucky, Mississippi, North Carolina and Tennessee issued decisions
17 finding the Biddix CLECs in breach of their ICAs with BellSouth. All told, those four
18 commissions determined that the Biddix CLECs owed BellSouth more than \$34 million
19 for services BellSouth had furnished under the ICAs and that the CLECs wrongfully
20 withheld.

21 In January 2010, AT&T Florida sued one of the Biddix CLECs – LifeConnex –
22 for breaching the parties' ICA by failing to pay more than \$1 million as a result of
23 LifeConnex's assertion of the Biddix CLECs' bogus claims. In that proceeding, AT&T
24 Florida sought approval to terminate service to LifeConnex. LifeConnex then entered

1 into an arrangement with its affiliate, American Dial Tone (“ADT”) (another Biddix
2 entity), under which ADT – without informing AT&T Florida or this Commission –
3 purchased wholesale services from AT&T Florida and resold them to LifeConnex, which
4 then resold the AT&T Florida services to LifeConnex’s own customers. AT&T Florida
5 challenged this arrangement as a violation of LifeConnex’s ICA with BellSouth and
6 threatened to disconnect ADT. The Commission opened a second docket to deal with the
7 ADT issue. After a series of procedural maneuvers, the parties agreed that AT&T Florida
8 would not disconnect ADT if ADT deposited approximately \$197,000 into a segregated
9 escrow account pending resolution of the docket. (Like the other Biddix CLEC ICAs, the
10 ADT ICA did not itself have an escrow provision.) However, after depositing the amount
11 into escrow, ADT stopped doing business in Florida. LifeConnex’s CLEC certificate was
12 revoked in 2011, and LifeConnex was administratively dissolved in 2012 for failure to
13 file an annual report with the Florida Secretary of State. The Commission ultimately
14 dismissed AT&T Florida’s complaint against LifeConnex (neither party had pursued the
15 matter after LifeConnex stopped doing business) and issued a default judgment in favor
16 of AT&T Florida and against ADT. As a result of the default judgment against ADT, the
17 \$197,000 escrow was released to AT&T Florida.

18 In April 2014, Biddix and two others were indicted in federal court in Tampa for
19 their alleged roles in an approximately \$32 million fraud against the FCC’s Lifeline
20 Program. The indictment alleges that the defendants owned and operated a holding
21 company (“ATMS”) that owned and operated multiple subsidiary telephone companies
22 (including BLC and LifeConnex) that participated in the Lifeline Program. As chairman
23 of ATMS, Biddix caused the submission of falsely inflated claims to the Lifeline

1 Program between September 2009 and March 2011 that resulted in ATMS fraudulently
2 receiving more than \$32 million. The federal court authorized a seizure warrant seeking
3 the defendants' ill-gotten gains, including the contents of multiple bank accounts, a yacht
4 and several luxury automobiles.

5 As of today, the Biddix CLECs' ability to dispute the AT&T ILECs' bills –
6 including AT&T Florida's – without depositing the disputed amounts in escrow has cost
7 the AT&T ILECs more than \$34 million. It is highly unlikely that any of that money will
8 ever be recouped.

9 **Q. WHAT DOES THE BIDDIX EPISODE DEMONSTRATE?**

10 A. It is very important that CLECs that dispute their bills be required to escrow the disputed
11 amounts. Otherwise, AT&T Florida is exposed to an unwarranted risk of significant loss.

12 **Q. DO YOU HAVE ANY PARTICULAR CONCERNS REGARDING CA IN THIS**
13 **REGARD?**

14 A. Yes. Mike Ray, CA's president, is not new to the CLEC business in Florida. He was
15 previously the president of AstroTel, Inc., a CLEC that filed for Chapter 11 bankruptcy
16 protection in December 2010.¹¹ AstroTel's local exchange certificate was cancelled on
17 June 13, 2013 in Docket No. 130066.

18 Mr. Ray applied for CA's local exchange certificate October 24, 2011 and was
19 able to pay the requisite application fee and demonstrate financial fitness such that the
20 Commission approved CA's application on April 11, 2012. This despite the fact that the
21 ink was barely dry on the sale of AstroTel's assets to Birch Communications pursuant to

¹¹ U.S. Bankruptcy Court, Middle District of Florida, Orlando Division, Case No. 8:10-bk-29992-MGW.

1 the January 13, 2012 order of the bankruptcy court. Ironically, Mr. Ray requested on
2 March 25, 2013 that the Commission cancel AstroTel's certificate because AstroTel
3 could not pay the Florida Regulatory Assessment Fees for 2012 or 2013.

4 I understand that CA is not AstroTel, nor is Mike Ray Thomas Biddix. But
5 AT&T Florida has legitimate concerns about the future ability of CA to pay its bills to
6 AT&T Florida, particularly given the financial appeal of postponing payment by filing
7 billing disputes when there is no escrow requirement. AT&T Florida also has valid
8 concerns about unknown CLECs' future adoption of CA's ICA. Inclusion of AT&T
9 Florida's proposed escrow provisions will somewhat ease those concerns.

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

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

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

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

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

19 **Q. PLEASE EXPLAIN THIS ISSUE.**

20 A. Issue 24 concerns GT&C section 12.2. In resolving Issue 12 (definition of
21 "Discontinuance Notice"), the parties agreed to modify related language in section 12.2,

1 which now reads as follows, with AT&T Florida's proposed language in bold underline
2 and CA's language in bold italics:¹²

3 12.2 For purposes of this section 12.2, to "pay" a bill means to pay all
4 undisputed charges to the Billing Party **and to pay all Disputed Amounts**
5 **either to the Billing Party or into an escrow account in accordance**
6 **with Sections 11.9 and 11.10.** If the Billed Party fails to pay any portion
7 of a bill, including but not limited to any Late Payment Charges, by the
8 Bill Due Date, the Billing Party may send a written Notice
9 ("Discontinuance Notice") informing such Non-Paying Party that in order
10 to avoid disruption or disconnection of the Interconnection Services
11 furnished under this Agreement, the Non-Paying Party must pay all
12 *undisputed* unpaid amounts as provided above, within ***fifteen (15) thirty***
13 ***(30)*** calendar days. The Non-Paying Party must pay the bill in full as
14 described herein within ***fifteen (15) thirty (30)*** calendar days of the
15 Discontinuance Notice. If the Non-Paying Party does not pay as described
16 herein within ***fifteen (15) thirty (30)*** calendar days of the Discontinuance
17 Notice, the Billing Party may discontinue or disconnect Interconnection
18 Services furnished under this Agreement.

19 Thus, there are two disagreements: whether disputed amounts must be paid into escrow,
20 and whether the Non-Paying Party should be required to pay within 15 days or 30 days
21 after receiving a Discontinuance Notice. I have just explained, in connection with Issue
22 23, why the ICA should require disputed amounts to be paid into escrow. If the
23 Commission agrees, then the disputed language in the first sentence of section 12.2
24 should be included.

25 **Q. TURNING TO THE OTHER DISAGREEMENT, WHY IS AT&T FLORIDA'S**
26 **POSITION MORE REASONABLE THAN CA'S?**

¹² More than one month ago, on January 14, 2015, AT&T Florida informed CA it was modifying section 12.2 so that it would read as it is displayed in the text above. In that January 14 communication, AT&T Florida stated, "Although we believe that section 12.2 as set forth immediately above accurately reflects CA's positions, it [is] of course for CA to decide which portions of AT&T Florida's language it opposes and what additional language it proposes. Please let us know by reply to this email whether you agree that the foregoing accurately displays the disputed language for section 12.2 and, if does not, what CA would propose." CA expressed no disagreement with the way AT&T Florida displayed the modified language.

1 A. AT&T Florida’s proposed 15-day period is sufficient time after receiving a
2 Discontinuance Notice for the Billed Party to pay Unpaid Charges, either to the Billing
3 Party or into escrow. Since the Discontinuance Notice cannot be sent to the Billed Party
4 until after the charges are already Past Due (meaning the carrier has already had at least
5 31 days to pay), the carrier actually has a minimum of 46 days from the invoice date to
6 avoid service disconnection. That is certainly a reasonable amount of time for a carrier to
7 pay its undisputed charges and escrow disputed charges, or make mutually satisfactory
8 payment arrangements to avoid such action.

9 CA’s proposal, on the other hand, would give the Billed Party a minimum of 61
10 days after the invoice date to pay its undisputed bills. That is unreasonably long.

11 **Q. HOW DOES THE TIME PERIOD PROPOSED BY AT&T FLORIDA COMPARE**
12 **WITH THE TIME PERIOD IN OTHER INTERCONNECTION AGREEMENTS**
13 **THE FLORIDA COMMISSION HAS APPROVED?**

14 A. The Commission has approved many AT&T Florida ICAs with a 15-day limit, including
15 most, if not all, new ICAs approved since 2005.¹³

16 **Q. WHAT JUSTIFICATION HAS CA OFFERED FOR ITS PROPOSAL TO**
17 **EXTEND TO 30 DAYS THE 15-DAY PERIOD THAT THE COMMISSION HAS**
18 **REPEATELY APPROVED?**

19 A. None. In its Comments on this issue, CA noted that it “has lengthened the cure time from
20 15 days to 30 days from receipt of notice,” but it offered no explanation for the change.

¹³ There are some earlier vintage ICAs that provide for 30 days’ notice.

1 **ISSUE 25: SHOULD THE ICA OBLIGATE THE BILLING PARTY TO PROVIDE**
2 **ITEMIZED DETAIL OF EACH ADJUSTMENT WHEN CREDITING THE**
3 **BILLED PARTY WHEN A DISPUTE IS RESOLVED IN THE BILLED**
4 **PARTY'S FAVOR?**

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

6 **Q. WHAT IS THE DISPUTED CONTRACT LANGUAGE FOR THIS ISSUE?**

7 A. Under agreed language in GT&C section 11.3.1, if a billing dispute is resolved (in whole
8 or in part) in favor of the party that disputed the bill, the Billing Party will credit the
9 invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in
10 favor of the Non-Paying Party. CA proposes to add language to section 11.13.1 requiring
11 the Billing Party to “identify each specific adjustment or credit with the dispute reference
12 number provided by the Billed Party in its dispute of the charges being credited.” AT&T
13 Florida opposes the addition of that language.

14 **Q. IS AT&T FLORIDA UNWILLING TO PROVIDE THE INFORMATION**
15 **REQUIRIED BY CA'S PROPOSED LANGUAGE?**

16 A. Not at all. AT&T Florida is willing to provide that information when it can. In
17 particular, AT&T Florida will provide the associated claim number when processing
18 billing dispute credits where its systems are capable of doing so. However, there may be
19 instances where that is not possible, and AT&T Florida should not be contractually
20 obligated to do the impossible. In addition, credits may be applied following resolution
21 of formal billing disputes as directed by the Commission, which may not include the
22 level of specificity CA's language would require.

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

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

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

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

7 **Q. WHAT IS THE DISPUTE FOR THIS ISSUE?**

- 8 A. The parties agree that the billed party may dispute a bill for a period of 12 months, but
9 they disagree as to the starting point for counting the months and whether they count
10 backwards or forwards. AT&T Florida proposes that the time frame for disputing a bill
11 begins with the date the Billing Party was notified of the dispute and goes back 12
12 months.

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

17 In contrast, CA proposes that the 12-month period for disputing a bill begins when the
18 billed party received a "detailed" bill and goes forward.

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

24 CA's language does not define what a "detailed" bill is, or how it differs, if at all, from a
25 bill.

26 **Q. CAN YOU BRIEFLY STATE WHY AT&T FLORIDA'S PROPOSAL IS**
27 **SUPERIOR TO CA'S?**

1 A. While both proposals nominally provide a 12-month period for disputing a bill, AT&T
2 Florida's proposal is simple and easy to administer, while CA's proposal, as I will
3 explain, is absolutely nonsensical and would actually impose no time limit at all on
4 billing disputes.

5 **Q. PLEASE EXPLAIN WHY AT&T FLORIDA'S PROPOSAL IS SIMPLE AND**
6 **EASY TO ADMINISTER.**

7 A. The date the Billing Party is notified of a dispute is a clear date, which will make it
8 straightforward to determine if a billing dispute is timely and will eliminate disputes
9 regarding timeliness. For example, if AT&T Florida is notified on November 30, 2016
10 that CA disputes AT&T Florida's bills, it is easy to see – under AT&T Florida's language
11 – that CA's billing disputes could go back as far as December 1, 2015. Thus, if AT&T
12 Florida receives notification on November 30, 2016 that CA disputes charges reflected on
13 its October 2015 bill, it is clear that AT&T Florida would be entitled to reject that dispute
14 as untimely since it is more than 12 months prior to November 30, 2016.

15 **Q. WHAT IS WRONG WITH CA'S PROPOSED LANGUAGE?**

16 A. CA's language makes no sense. CA presumably intends to say something about the time
17 frame for disputing a bill, and yet CA's language makes no mention whatsoever of the
18 point in time at which the bill is disputed, effectively eliminating any limits on what bills
19 CA may dispute. Under CA's language, a party is entitled to dispute "those charges
20 which appeared on a bill within the twelve (12) months immediately following the date
21 on which the Billed Party first received the detailed bill from the Billing Party." One can
22 only wonder what that is supposed to mean: After all, *all* charges presumably appear on
23 a bill within twelve months of the date on which they first appear on the bill. Apart from

1 that, and as I explain in my testimony for Issue 11, CA's language would require AT&T
2 Florida to track when CA received each bill by verifying proof of receipt, which would
3 place an unnecessary and inappropriate burden on AT&T Florida. Moreover, it is
4 unreasonable, in fact nonsensical, to take a point in the past and permit CA to dispute
5 AT&T Florida's bills for the subsequent 12 months. And finally, CA's use of the
6 undefined term "detailed bill" is guaranteed to cause disputes of its own. CA's language
7 would permit it to claim that one or more prior AT&T Florida bills did not contain
8 sufficient detail, resetting the time (if there even is a time, which is not clear from CA's
9 language) for lodging billing disputes.

10 **Q. CAN YOU PROVIDE AN EXAMPLE TO DEMONSTRATE HOW CA'S**
11 **LANGUAGE WOULD PERMIT AN UNREASONABLE OUTCOME?**

12 A. Yes. CA could choose *any* date in the past it wanted and decide to dispute the bills
13 received for the year following that date. Let's look at an example. Suppose it is
14 February 15, 2017. CA's language would permit it to dispute a bill it received on July
15 15, 2015 (because that is the date CA selected) and the subsequent 11 months' bills, *i.e.*,
16 bills received through June 14, 2016. CA could then initiate a separate dispute for the
17 bills it received June 15, 2016 through February 15, 2017. In other words, CA's
18 language would effectively permit it to dispute all bills AT&T Florida ever sends it, with
19 no limit on how far back in time CA could go because one could always count forward
20 from one to 12 months from whatever date CA selected. This is plainly unreasonable.

21 **Q. HOW SHOULD THE COMMISSION RULE ON ISSUE 26?**

1 A. The Commission should adopt AT&T Florida's straightforward proposal to permit CA to
2 dispute AT&T Florida's bills for the 12 months prior to the date AT&T Florida is
3 notified of CA's dispute and reject CA's nonsensical proposal.

4 **ISSUE 27: SHOULD THE ICA PERMIT COMMUNICATIONS AUTHORITY TO**
5 **DISPUTE A CLASS OF RELATED CHARGES ON A SINGLE DISPUTE**
6 **NOTICE?**

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

8 **Q. PLEASE EXPLAIN THE DISPUTE FOR ISSUE 27.**

9 A. AT&T Florida objects to CA's proposed language that would obligate AT&T Florida to
10 accept a billing dispute that includes an entire class of related charges on a single dispute
11 notice.

12 **Q. WHAT IS AT&T FLORIDA'S OBJECTION TO CA'S PROPOSED LANGUAGE?**

13 A. Normal monthly recurring and nonrecurring charges should be disputed at the billed item
14 level, and the AT&T Florida dispute template is structured in that manner. In most cases,
15 CLECs have large billing accounts with a mixture of services, and the specificity required
16 to identify the disputed service necessitates that the customer submit the billing detail.
17 CA's language would obligate AT&T Florida to accept multiple billing disputes on a
18 single dispute notice, even if AT&T Florida could not process those particular individual
19 disputes on a bulk basis.

20 **Q. DOES AT&T FLORIDA EVER ACCEPT BULK BILLING DISPUTES?**

21 A. Yes. AT&T Florida does accept bulk disputes in some cases, generally as the result of an
22 agreement on an individual case basis. If CA believes that a single factor adversely
23 affected numerous related billing entries, CA could request that AT&T Florida accept a

1 single dispute for the entire class of entries. It is to both parties' advantage to work
2 cooperatively to process billing disputes in the most efficient and expeditious manner
3 possible, which may or may not mean that they are handled in bulk.

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

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

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

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

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

16 **Q. WHAT IS THE DISAGREEMENT CONCERNING GT&C SECTION 13.9.1?**

17 A. Section 13 of the GT&Cs governs "Dispute Resolution." CA proposes to include a
18 sentence in section 13.9.1 that would say:

19 *Nothing in this agreement shall be construed to prohibit a party from*
20 *seeking relief from the Commission at any time for an alleged violation*
21 *of this agreement or of any law or regulation by the other party, whether*
22 *or not dispute resolution procedures have been followed.*

23 AT&T Florida opposes that proposal.

24 **Q. ON WHAT GROUNDS DOES AT&T FLORIDA OPPOSE CA'S PROPOSED**
25 **LANGUAGE?**

1 A. AT&T Florida opposes CA’s language on two separate grounds, one of which gives rise
2 to Issue 29(i) and the other of which gives rise to Issue 29(ii). *First*, the parties should
3 not be allowed to seek relief from the Commission “at any time.” Rather, they should be
4 required to try to resolve any disagreement that arises under the ICA by the informal
5 dispute resolution process set forth in the ICA before asking the Commission to intervene
6 (Issue 29(i)). *Second*, the fact of the matter is that once the Commission approves the
7 parties’ ICA, the parties’ relationship with respect to the matters covered by the ICA are
8 governed solely by the ICA, and not by any laws or regulations pursuant to which the
9 ICA was made. Consequently, and contrary to CA’s proposed language, any claims that
10 the parties may have against each other with respect to those matters will be claims for
11 breach of the ICA – not claims for violations of laws or regulations (Issue 29(ii)).

12 **Q. PLEASE DESCRIBE THE DISPUTE RESOLUTION PROVISIONS THAT YOU**
13 **CONTEND THE PARTIES SHOULD FOLLOW BEFORE THEY TAKE A**
14 **DISAGREEMENT TO THE COMMISSION.**

15 A. In section 13.2.1, the parties have agreed:

16 The Parties desire to resolve disputes arising out of this Agreement
17 without litigation. Accordingly, the Parties agree to use the following
18 Dispute Resolution procedures with respect to any controversy or claim
19 arising out of or relating to this Agreement or its breach.

20 That language is followed by terms that govern the commencement of dispute resolution
21 via written notice (section 13.3); Service Center Dispute Resolution for billing disputes
22 (section 13.4)¹⁴; and time periods for resolving disputed amounts (sections 13.4.5 and
23 13.4.6). Section 13.4.7 then provides for the Disputing Party to invoke Informal

¹⁴ Most of section 13.4 is agreed, but there are two disagreements concerning the section, which are the subject of Issues 22b and 27.

1 Resolution of Disputes pursuant to section 13.5, which establishes procedures for
2 informal dispute resolution. Then, section 13.6, entitled “Formal Dispute Resolution,”
3 provides:

4 If the Parties are unable to resolve the dispute through the informal
5 procedure described in Section 13.5 above, then either Party may invoke
6 the formal Dispute Resolution procedures described in this Section 13.6.
7 Unless agreed among all Parties, formal Dispute Resolution procedures,
8 including arbitration *or other procedures* as appropriate, may be invoked
9 not earlier than sixty (60) calendar days after receipt of the letter initiating
10 Dispute Resolution under Section 13.5 above. (Emphasis added).

11 One of the “other procedures” encompassed by Formal Dispute Resolution is a
12 Commission proceeding. Thus, the parties have agreed that a Commission proceeding
13 may not be initiated until the parties have engaged in 60 days of Informal Dispute
14 Resolution pursuant to section 13.5.

15 **Q. WHY SHOULD THE PARTIES NOT BE ALLOWED TO SEEK RELIEF FROM**
16 **THE COMMISSION BEFORE THEY USE THE AGREED INFORMAL**
17 **DISPUTE RESOLUTION PROCEDURES IN THE ICA?**

18 A. In the first place, because the parties have already agreed to pursue informal dispute
19 resolution before resorting to the Commission. Section 13.2.1, which I quoted above,
20 plainly says that the parties desire to resolve any disputes under the ICA without
21 litigation, and therefore have agreed to abide by the dispute resolution procedures set
22 forth in section 13. Those procedures include informal dispute resolution under section
23 13.5 – and section 13.6, which covers Commission proceedings as well as other means of
24 formal dispute resolution, clearly says that no such formal proceeding may begin until the
25 parties have engaged in informal dispute resolution for 60 days. Thus, the language CA

1 is proposing for section 13.9.1 is inconsistent with the agreed language. That alone is
2 sufficient reason to reject the language.

3 Second, even if the parties had not already agreed to engage in informal dispute
4 resolution before bringing a complaint to the Commission, it would be eminently
5 reasonable for the Commission to require it. It is not unusual for disagreements to arise
6 between parties to ICAs, and many of those disagreements can be resolved without
7 litigation. The ICA should ensure that the parties will not waste the Commission's time
8 with disputes that the parties may be able to work through on their own if they make an
9 effort to do so.

10 **Q. YOUR SECOND OBJECTION TO CA'S PROPOSED LANGUAGE WAS THAT**
11 **ANY CLAIMS THAT THE PARTIES MAY HAVE AGAINST EACH OTHER**
12 **WITH RESPECT TO THE MATTERS COVERED BY THEIR ICA WILL BE**
13 **CLAIMS FOR BREACH OF THE ICA, RATHER THAN CLAIMS FOR**
14 **VIOLATION OF LAWS OR REGULATIONS. PLEASE EXPLAIN.**

15 A. This is really a legal point, and I am not an attorney. AT&T Florida will present its
16 argument on this point in its legal briefs, but I will summarize the argument here, based
17 on information provided by counsel, so that the Commission will understand AT&T
18 Florida's position.

19 Neither party to an ICA can make a claim against the other for violating the
20 requirements of the 1996 Act or of the FCC's rules implementing the 1996 Act. This is
21 because the duties imposed by the 1996 Act are enforced *only* through the ICA process
22 mandated by section 252 of the Act. Consequently, one party to an ICA may have a
23 claim against the other for breach of the ICA, but it cannot have a claim for failure to
24 comply with the requirements of section 251(c) or the FCC's implementing regulations.

1 This is consistent with the fact that under section 252(a) of the 1996 Act, carriers
2 may negotiate terms for an ICA “without regard to” the substantive requirements set forth
3 in the Act. Consequently, an ILEC and a CLEC may negotiate an ICA that, for example,
4 gives the CLEC more than the law entitles it to with respect to collocation, and less than
5 the law entitles it to with respect to access to UNEs. Both parties are then bound by the
6 ICA to which they agreed. If the ILEC refuses to provide the CLEC with the UNE the
7 CLEC gave up in negotiations in order to obtain the “something more” that the ILEC
8 gave with respect to collocation, the CLEC cannot sue the ILEC on the ground that the
9 ILEC is not complying with its statutory obligation. Again, the only claim the CLEC can
10 have is one for breach of the ICA.

11 As AT&T Florida will demonstrate in its legal briefs, the federal courts and the
12 FCC have uniformly recognized these principles. For example, the United States Court
13 of Appeals for the Sixth Circuit has explained that “once an agreement is approved,” the
14 parties are “governed by the interconnection agreement” and “these general duties [under
15 the 1996 Act] do not control” and “no longer apply.”¹⁵

16 The FCC agrees. In *Core Commc’ns, Inc. v. SBC Commc’ns Inc.*, 18 FCC Rcd.
17 7568, 2003 WL 1884294 (April 10, 2003), two CLECs complained to the FCC that
18 ILECs were refusing to allow them to use a UNE called “shared transport” in violation
19 of, among other things, section 251(c)(3) of the 1996 Act and the FCC’s implementing
20 rules. *Id.* ¶¶ 2, 28. With respect to the claim of one CLEC, Z-Tel, against one of the
21 ILECs, Pacific, the FCC ruled:

¹⁵ *Mich. Bell Tel. Co. v. MCIMetro Access Trans. Servs., Inc.*, 323 F.3d 348, 359 (6th Cir. 2003).

1 Our rules do plainly require unbundling of shared transport At the
2 same time, however, the obligations created by section 251 and our rules
3 are effectuated through the process established in section 252 – that is, by
4 reaching agreement through negotiation, arbitration, or opt-in.¹⁶ In this
5 case, Z-Tel opted into a pre-existing Pacific interconnection agreement
6 with another party, including its shared transport terms We agree
7 with Defendants that Z-Tel is bound by the terms of its agreement

8 *Id.* ¶ 30 (quotation marks and footnotes omitted). Thus, the FCC declined to consider Z-
9 Tel’s claim for violation of section 251(c)(3) and the FCC’s rules, because Z-Tel, having
10 entered into an ICA, had only the rights spelled out in that ICA.

11 **Q. HOW IS CA’S PROPOSED LANGUAGE FOR GT&C SECTION 13.9.1**
12 **INCONSISTENT WITH THE PRINCIPLES YOU JUST DISCUSSED?**

13 A. Again, CA’s proposed language states, “Nothing in this agreement shall be construed to
14 prohibit a party from seeking relief from the Commission at any time for an alleged
15 violation of this agreement *or of any law or regulation by the other party*, whether or not
16 dispute resolution procedures have been followed.” (Emphasis added). That language is
17 contrary to law, because in reality, once the Commission approves an ICA between
18 AT&T Florida and CA, every provision in the ICA will operate to prohibit the parties
19 from seeking relief for an alleged violation of any law or regulation governing the subject
20 matter of that provision, for the reasons I just explained.

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

22 A. The Commission should reject CA’s proposed language, because it is inconsistent both
23 with the parties’ prudent agreement to engage in informal dispute resolution before
24 bringing a complaint to the Commission (Issue 29(i)), and with the fact that the parties

¹⁶ “Opt-in” is a reference to 47 U.S.C. § 252(i), which allows a CLEC to adopt as its own any state commission-approved ICA to which the ILEC is a party, subject to certain limitations.

1 will be bound by the terms of their ICA, not by the laws and regulations pursuant to
2 which the ICA was made (Issue 29(ii)).

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

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

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

10 **Q. SHOULD THE JOINT AND SEVERAL LIABILITY TERMS IN THE ICA BE**
11 **RECIPROCAL?**

12 A. No. CA's argument that there should be parity between the parties on this matter makes
13 no sense. The only AT&T entity that can be subject to this ICA as an ILEC is AT&T
14 Florida; AT&T Florida's CLEC affiliates cannot be subject to this ICA in the position of
15 the ILEC. The only way an AT&T CLEC affiliate would be subject to this ICA is if it
16 adopted CA's ICA pursuant to section 252(i) of the 1996 Act. However, in that event,
17 AT&T Florida's CLEC affiliate would be subject to the same terms and conditions as
18 CA, not those of the ILEC.

19 **Q. SHOULD CA AND ITS AFFILIATE(S) BE JOINTLY AND SEVERALLY**
20 **LIABLE WHEN OPERATING OUT OF CA'S ICA?**

21 A. Yes. To the extent a CA affiliate is subject to the ICA (pursuant to GT&C section 3.12),
22 CA and its affiliate must be jointly and severally liable. This protects AT&T Florida
23 from potential loss resulting from inappropriate conduct by and between CA's affiliates.

24 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUES 30(i) AND 30(ii)?**

1 A. The Commission should adopt AT&T Florida's language in GT&C section 17.1, which
2 makes all entities placing orders on CA's behalf jointly and severally liable. CA's
3 language should be rejected.

4 **ISSUE 32: SHALL THE PURCHASING PARTY BE PERMITTED TO NOT PAY**
5 **TAXES BECAUSE OF A FAILURE BY THE PROVIDING PARTY TO**
6 **INCLUDE TAXES ON AN INVOICE OR TO STATE A TAX**
7 **SEPARATELY ON SUCH INVOICE?**

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

9 **Q. WILL AT&T FLORIDA IDENTIFY TAXES AS A SEPARATE ITEM ON ITS**
10 **BILLS TO CA?**

11 A. Yes, whenever possible – which is what AT&T Florida's proposed language states.
12 AT&T Florida has no reason to hide the legitimate taxes it bills and seeks to collect from
13 CA, nor does it have any reason to purposely omit taxes from its bills. However, it is
14 possible that taxes could be omitted if, for example, there was a new local tax that applied
15 to the services AT&T Florida provides to CA, but AT&T Florida's billing system had not
16 yet been updated to reflect the new tax. In that case, the new tax would not be listed on
17 CA's bill.

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

20 A. No. Continuing the example I used above, absent AT&T Florida's proposed language,
21 CA might claim that it did not have to pay the new tax because it was not separately
22 listed on AT&T Florida's bill. Of course, CA should not be excused from its obligation
23 to pay legitimate taxes based on the appearance of AT&T Florida's bills.

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

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

5 **ISSUE 35: SHOULD THE DEFINITION OF "ENTRANCE FACILITIES" EXCLUDE**
6 **INTERCONNECTION ARRANGEMENTS WHERE THE POI IS WITHIN**
7 **AN AT&T FLORIDA SERVING WIRE CENTER AND**
8 **COMMUNICATIONS AUTHORITY PROVIDES ITS OWN TRANSPORT**
9 **ON ITS SIDE OF THE POI?**

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

11 **Q. WHAT ARE CA'S OPTIONS FOR INTERCONNECTION WITH AT&T**
12 **FLORIDA'S NETWORK?**

13 A. Agreed language in Net. Int. section 3.3 provides CA with three methods of
14 interconnection from which it may choose: collocation, leased entrance facilities, and
15 fiber meet point. If CA elects the leased entrance facilities option (section 3.3.2), it may
16 self-provision facilities, lease them from another carrier, or lease Entrance Facilities from
17 AT&T Florida (section 3.3.2.1).

18 **Q. HOW WILL THE ICA DEFINE THE TERM "ENTRANCE FACILITIES"?**

19 A. The parties have agreed to the following definition:

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

27 CA proposes to add the following language, to which AT&T Florida objects:

1 *Entrance Facilities do not apply to interconnection arrangements where*
2 *the mutually-agreed Point of Interconnection (“POI”) is within an*
3 *AT&T-21STATE Serving Wire Center, and CA provides its own*
4 *transport on its side of that POI.*

5 **Q. DO YOU UNDERSTAND CA’S POSITION ON ITS NEED FOR THE**
6 **ADDITIONAL LANGUAGE?**

7 A. No; I find CA’s position confusing. CA’s Comments stated:

8 AT&T’s definition of entrance facilities implies that AT&T could charge
9 for entrance facilities regardless of where the POI is located, when it
10 should only be entitled to charge for actual entrance facilities where the
11 POI is *not* within a AT&T central office. (Emphasis added).

12 CA’s position makes no sense – and neither does its proposed contract language
13 reflecting that position – because the only time AT&T Florida would charge CA for an
14 Entrance Facility is when the POI *is* within an AT&T Florida central office. It appears
15 that CA misunderstands what Entrance Facilities are and the options CA has to
16 interconnect with AT&T Florida.

17 **Q. MAY CA ESTABLISH A POI THAT IS NOT LOCATED WITHIN AN AT&T**
18 **FLORIDA CENTRAL OFFICE?**

19 A. Yes. The parties have agreed that CA may request interconnection using a fiber meet
20 point arrangement pursuant to Net. Int. section 3.3.3, in which case the POI will be at a
21 designated manhole outside AT&T Florida’s central office building.¹⁷ However, CLECs
22 most commonly establish POIs in AT&T Florida’s tandem / end office buildings.

23 **Q. WOULD AT&T FLORIDA CHARGE CA FOR ENTRANCE FACILITIES IN**
24 **THE FIBER MEET POINT SCENARIO?**

¹⁷ Net. Int. section 3.3.3.7.

1 A. No. Pursuant to Net. Int. section 3.3.3.7, CA would be responsible to bring its own fiber
2 to the designated manhole (*i.e.*, the POI), and AT&T Florida would (at its own expense)
3 pull CA's fiber through to the cable vault inside the building. There is no Entrance
4 Facility in the fiber meet point scenario, so of course AT&T Florida would not charge for
5 Entrance Facilities.

6 **Q. IN RESPONSE TO STAFF'S INTERROGATORY NO. 7 TO CA, CA STATES**
7 **THAT "THE POI SHOULD BE THE ACTUAL BUILDING."¹⁸ CAN AN AT&T**
8 **FLORIDA BUILDING BE A POI?**

9 A. No. The parties have agreed in Net. Int. section 2.26 that a POI is a point on the AT&T
10 Florida network, which may be at an end office or tandem building. That does not mean
11 that the building itself is a technically feasible point of interconnection – it is a building,
12 not a point on AT&T Florida's network. Rather, the POI would be at a physical piece of
13 AT&T Florida's equipment within the building to which both parties connect their
14 respective facilities, for example at a cross-connect point on a distribution frame. CA is
15 responsible to provide the facilities to connect with AT&T Florida's network at the POI,
16 even when CA is collocated in the same building where it has established the POI.

17 **Q. CAN CA DESIGNATE ITS COLLOCATION SPACE AS THE POI?**

18 A. No. The POI must be a point on AT&T Florida's network, and the collocation space is
19 not part of AT&T Florida's network. AT&T Florida witness Mark Neinast explains in
20 detail why the collocation space cannot be the POI in his testimony on Issue 38.

21 **Q. WOULD AT&T FLORIDA CHARGE CA FOR ENTRANCE FACILITIES IN**
22 **THE COLLOCATION SCENARIO?**

¹⁸ See Exhibit PHP-6.

1 A. No. Entrance Facilities and collocation are mutually exclusive with respect to a
2 particular AT&T Florida central office. However, when CA elects to use collocation as
3 its method of interconnection (Net. Int. section 3.3.1), the parties have agreed to language
4 stating that CA is responsible for the facilities to connect from the collocation space to
5 the demarcation point designated by AT&T Florida.¹⁹ Those intra-building facilities are
6 not “Entrance Facilities” as the ICA defines that term.

7 **Q. WHEN WOULD AT&T FLORIDA BILL FOR ENTRANCE FACILITIES**
8 **PURSUANT TO THE ICA?**

9 A. The parties have agreed to the following language in Net. Int. section 3.3.2.1:

10 When CLEC does *not* elect to collocate transport terminating equipment at
11 an AT&T-21STATE Tandem or End Office, CLEC may self provision
12 facilities, deploy third party interconnection facilities, *or lease existing*
13 *Entrance Facilities from AT&T-21STATE.* (Emphases added.)

14 Thus, Entrance Facilities would be provided (and AT&T Florida would bill) *only* when
15 the POI is within an AT&T Florida central office and CA does not elect to collocate in
16 that office. Entrance Facilities would not be provided (and AT&T Florida would not bill)
17 when CA collocates transport terminating equipment or leases facilities from another
18 carrier or self-provisions.

19 **Q. SINCE AT&T FLORIDA WILL NOT CHARGE CA FOR ENTRANCE**
20 **FACILITIES WHEN CA SELF-PROVISIONS OR LEASES FACILITIES FROM**
21 **ANOTHER CARRIER, WHY DOES AT&T FLORIDA OBJECT TO CA’S**
22 **ADDITIONAL LANGUAGE IN NET. INT. SECTION 2.9?**

23 A. First, it is not clear what “Entrance Facilities do not apply” actually means, so CA’s
24 proposed language is open to differing interpretations. Does it mean that CA cannot

¹⁹ See, for example, Attachment 12, sections 3.34.1.3 and 3.35.1.3.

1 order Entrance Facilities? Does it mean that CA may order Entrance Facilities but AT&T
2 Florida may not charge for them? Does it mean (as I think CA may believe) that AT&T
3 Florida may not charge CA for any intra-building facilities? The parties agree that CA
4 bears the responsibility for all transport facilities on its side of the POI, regardless of
5 whether CA self-provides the facilities, leases them from another carrier, or leases them
6 from AT&T Florida.²⁰ In the context of that responsibility, CA's proposed additional
7 language stating that "Entrance Facilities do not apply" when CA "provides its own
8 transport," is confusing and could be interpreted to include when CA leases facilities
9 from AT&T Florida. This would contradict other ICA provisions, which should be
10 avoided.

11 Further, in response to Staff's Interrogatories Nos. 7 and 8, which are related to
12 this Issue 35, CA describes a Terra Nova collocation scenario for which CA states it does
13 not believe Terra Nova should be charged for facilities within AT&T Florida's central
14 office.²¹ CA stated that its proposed language is intended to address the Terra Nova
15 collocation scenario, as CA has described it, and to eliminate CA's responsibility to pay
16 for any facilities within AT&T Florida's central office. As I explained, collocation and
17 Entrance Facilities are mutually exclusive, so CA's language would not accomplish what
18 it apparently seeks to accomplish. CA's confusion on this matter makes CA's proposed
19 language ripe for future dispute.

²⁰ Net. Int. section 3.2.2 states: "[E]ach Party is financially responsible for the provisioning of facilities on its side of the negotiated POI(s). Each Party is responsible for the appropriate sizing, operation and maintenance of the transport facility to its side of the POI(s)."

²¹ See Exhibits PHP-6 and PHP-7. I would also note that this arbitration is not the proper forum to discuss a dispute between Terra Nova and AT&T Florida.

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

2 A. The Commission should reject CA's additional language, which is confusing, open to
3 differing interpretations, is inconsistent with and contradicts other agreed language, and
4 would likely lead to disputes.

5 **ISSUE 36: SHOULD THE NETWORK INTERCONNECTION ARCHITECTURE**
6 **PLAN SECTION OF THE ICA PROVIDE THAT COMMUNICATIONS**
7 **AUTHORITY MAY LEASE TELRIC-PRICED FACILITIES TO LINK**
8 **FROM ONE POI TO ANOTHER?**

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

10 **Q. WHAT IS THE PARTIES' DISPUTE FOR ISSUE 36?**

11 A. Section 3.2.4.6 of the Network Interconnection attachment is in the portion of that
12 attachment (namely, section 3.2) that concerns the network interconnection plan.
13 Sections 3.2.4.2 through 3.2.4.4 state that CA may establish a single POI per LATA, and
14 section 3.2.4.5 provides the criteria pursuant to which CA is obligated to add an
15 additional POI. Section 3.2.4.6 is as follows:

16 3.2.4.6 The additional POI(s) will be established within ninety (90)
17 calendar days of notification that the threshold has been met. ***CA may***
18 ***lease facilities from AT&T as Dedicated Transport - Interoffice Channel***
19 ***from an existing POI to the additional POI for this purpose.***

20 AT&T Florida objects to CA's proposed language (in bold italics) because it has nothing
21 to do with the parties' network architecture plan, is not necessary, and introduces an
22 ambiguity that could lead to disputes.

23 **Q. WHAT IS INCLUDED IN THE NETWORK ARCHITECTURE PLAN SECTION**
24 **OF THE ICA?**

25 A. Net. Int. section 3.2 sets forth overarching terms and conditions regarding how the parties
26 will interconnect. It generally describes AT&T Florida's network and provides that the

1 parties will agree to and document a physical architecture plan for each area (section
2 3.2.1) and how the parties will handle changes to a plan (section 3.2.5). It describes the
3 parties' respective physical and financial responsibilities associated with the
4 interconnection arrangement CA selects (sections 3.2.2 and 3.2.6), as well as how foreign
5 exchange ("FX") services will be handled (section 3.2.3). It provides the terms for
6 establishment of one or more POIs in a LATA (section 3.2.4). And it sets forth the
7 technical interfaces the parties will use (section 3.2.7). It does not include the specific
8 interconnection methods available to CA (the how), which are set forth in section 3.3, nor
9 does it include any pricing (the how much), which is in the Pricing Sheets and/or relevant
10 tariffs.

11 **Q. YOU STATED THAT CA'S PROPOSED LANGUAGE IS NOT NECESSARY.**
12 **WHAT ARE CA'S OPTIONS FOR HOW IT MAY ESTABLISH AN**
13 **ADDITIONAL POI?**

14 A. Net. Int. section 3.3, which is an agreed provision, sets forth CA's options for
15 interconnecting with AT&T Florida, including the establishment of one or more POIs.
16 CA may collocate in an AT&T Florida central office (section 3.3.1); it may lease
17 facilities from AT&T Florida, lease them from another carrier, or self-provision them
18 (section 3.3.2); or it may establish a fiber meet point (section 3.3.3). In light of those
19 provisions, CA's proposed language setting forth options for interconnecting at an
20 additional POI in section 3.2.4.6 is at best unnecessary and at worst – as is the case here –
21 potentially confusing.

22 **Q. IS CA'S PROPOSED LANGUAGE CLEAR AS TO WHAT IS MEANT BY THE**
23 **"DEDICATED TRANSPORT – INTEROFFICE CHANNEL" CA MAY LEASE**
24 **TO ESTABLISH AN ADDITIONAL POI?**

1 A. No. “Dedicated Transport – Interoffice Channel” is available as an unbundled network
2 element (“UNE”) pursuant to section 251(c)(3) and it is also a separate rate element for
3 the purpose of interconnection pursuant to section 251(c)(2), and CA’s language does not
4 recognize the distinction.

5 **Q. WHY IS THAT VAGUENESS PROBLEMATIC?**

6 A. Because the availability and use criteria for UNEs and interconnection are different, CA’s
7 language could lead to disputes. CA may use a UNE for any purpose,²² including
8 interconnection, but unbundled Dedicated Transport – Interoffice Channel is only
9 available when the requested route is impaired.²³ In contrast, while there is no
10 impairment test for availability of interconnection facilities, there are strict criteria
11 regarding their use.²⁴ In its Comments for this issue, CA stated its desire for “UNE
12 rates,” not that it seeks to use a local interconnection facility to connect to the additional
13 POI.

14 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 36?**

15 A. The Commission should reject CA’s additional language in Net. Int. section 3.2.4.6
16 because CA’s language is unnecessary and could lead to disputes.

²² There are limited exceptions. For example, CLECs are not entitled to UNEs for the sole purpose of providing information services (see Issue 1, addressed by AT&T Florida witness Susan Kemp).

²³ Terms and conditions for UNE DS1 and DS3 Dedicated Transport are set forth in section 9 of the UNE attachment.

²⁴ See Net. Int. sections 3.3.2.2 and 3.3.2.3.

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

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

6 **Q. WHAT IS THE DISPUTE REGARDING NET. INT. SECTION 3.2.6?**

7 A. The parties agree that CA bears the sole responsibility for the facilities that carry
8 Operator Services/Directory Assistance ("OS/DA"), E911, Mass Calling, and Third Party
9 Trunk Groups. The dispute concerns whether that responsibility extends beyond the POI.
10 CA proposes to include the bold italics language in Net. Int. section 3.2.6, to which
11 AT&T Florida objects.

12 CLEC is solely responsible, including financially, for the facilities that
13 carry Operator Services/Directory Assistance ("OS/DA"), E911, Mass
14 Calling, Third Party and Meet Point²⁵ Trunk Groups *on its side of the*
15 *Point of Interconnection ("POI")*.

16 **Q. WHY SHOULD THE ICA MAKE CA SOLELY RESPONSIBLE FOR THE**
17 **FACILITIES THAT CARRY CA'S OS/DA, E911, MASS CALLING, AND THIRD**
18 **PARTY TRUNK GROUPS?**

19 A. CA should be solely responsible for the facilities that carry its OS/DA, E911, Mass
20 Calling (high volume call-in, or "HVCI"), and Third Party trunk groups because they are
21 used by CA for the sole benefit of its own customers, and not for the mutual exchange of
22 traffic with AT&T Florida.

23 **Q. DOESN'T CA AGREE THAT IT IS RESPONSIBLE FOR THESE FACILITIES?**

²⁵ Because the network attachment was drafted to accommodate interconnection with AT&T ILECs in 21 states, it includes numerous references to both Third Party and Meet Point Trunk Groups. Third Party Trunk Groups are applicable in AT&T's Southeast region (section 4.3.6), including AT&T Florida, while Meet Point Trunk Groups are used in AT&T's 12-state region. Any references in the ICA to Meet Point Trunk Groups will not apply to CA in Florida.

1 A. Only partially. CA proposes language in section 3.2.6 that would limit its responsibility
2 for these facilities to that portion that is on CA's side of the POI. CA asserted in its
3 Comments that these are local interconnection facilities and that, therefore, they are
4 subject to the same financial responsibilities as other local interconnection facilities.

5 **Q. IS CA CORRECT THAT THESE ARE LOCAL INTERCONNECTION**
6 **FACILITIES?**

7 A. No. The FCC has defined interconnection as "the linking of two networks for the mutual
8 exchange of traffic. This term does not include the transport and termination of traffic."²⁶
9 In the case of OS/DA, E911, HVCI and Third Party trunk groups, there is no "mutual
10 exchange of traffic." These trunk groups carry ancillary services (Net. Int. section 4.1.2),
11 separate and apart from the local interconnection trunks (sections 4.3.1 and 4.3.3). The
12 POI is not the demarcation point between the parties' networks for ancillary services.

13 **Q. WHAT IS THE DEMARCATION POINT FOR OS/DA?**

14 A. The demarcation point for OS/DA is at the AT&T Florida OS/DA switch, pursuant to
15 agreed language in Attachment Customer Information Services ("CIS") section 3.3.3.
16 The ICA also states that the demarcation point need not coincide with the POI (CIS
17 section 3.3.2). Finally, CIS section 3.3.4 states, "CLEC shall be financially responsible
18 for the transport facilities to the AT&T-21STATE switch(es)." These provisions make
19 clear that the POI (which is the demarcation point for local interconnection facilities) is
20 irrelevant when considering financial responsibility for the facilities that carry CA's
21 OS/DA traffic.

²⁶ 47 C.F.R. § 51.5.

1 **Q. HOW DOES THE ICA ADDRESS RESPONSIBILITY FOR THE FACILITIES**
2 **THAT CARRY CA'S E911 TRAFFIC?**

3 A. Attachment E911, section 4.2.1 states:

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

8 And E911 section 4.2.5 states:

9 CLEC shall maintain facility transport capacity sufficient to route 911
10 traffic over trunks dedicated to 911 Interconnection between the CLEC
11 switch and the AT&T-21STATE E911 SR.

12 **Q. IS AT&T FLORIDA'S SELECTIVE ROUTER THE POI?**

13 A. No. E911 section 2.13 defines AT&T Florida's selective router as "the equipment used
14 to route a call to 911 to the proper PSAP based upon the number and location of the
15 caller." In other words, the SR is a switch specially equipped to handle the proper
16 routing of E911 calls – it is not a POI. CA's proposal that it be financially responsible
17 for the facilities used for its E911 traffic only on CA's side of the POI is in direct conflict
18 with agreed language in the E911 attachment.

19 **Q. HAS CA AGREED TO INCLUDE LANGUAGE IN THE ICA OBLIGATING CA**
20 **TO ESTABLISH HVCI TRUNKS?**

21 A. No. AT&T Florida's proposed language requiring HVCI trunks is the subject of Issue
22 40, which Mr. Neinast discusses. To the extent AT&T Florida prevails on Issue 40 and
23 CA establishes HVCI trunk groups, it is appropriate for CA to be solely responsible for
24 the facilities that carry its HVCI traffic to the designated HVCI access tandem in each
25 serving area.

1 **Q. HOW DOES THE ICA DEFINE A THIRD PARTY TRUNK GROUP?**

2 A. Net. Int. section 2.33 defines Third Party Trunk Group as:

3 a trunk group between CLEC and AT&T SOUTHEAST REGION 9-
4 STATE's Tandem that is designated and utilized to transport Traffic that
5 neither originates with nor terminates to an AT&T SOUTHEAST
6 REGION 9-STATE End User, including interexchange traffic (whether
7 IntraLATA or InterLATA) to/from CLEC End Users and IXC's. All such
8 traffic is collectively referred to as Third Party Traffic.

9 **Q. DOES THE ICA DESIGNATE CA AS THE PARTY RESPONSIBLE FOR THE**
10 **FACILITIES THAT CARRY THIRD PARTY TRAFFIC?**

11 A. Yes. Agreed language in Net. Int. section 4.3.6.1 states:

12 CLEC shall be responsible for *all* recurring and nonrecurring charges
13 associated with Third Party Traffic trunks *and facilities*. (Emphasis
14 added).

15 AT&T Florida is not financially responsible (nor should it be) for any costs associated
16 with third party traffic.

17 **Q. HAS CA COMMUNICATED A CONSISTENT MESSAGE REGARDING THE**
18 **JUSTIFICATION FOR ITS LANGUAGE?**

19 A. No. In its Comments, CA stated that "each party is responsible only for facilities and
20 costs on its side of the POI for local interconnection." As I explain above, AT&T Florida
21 disagrees that this principle applies to the call types at issue, which are ancillary services
22 and not local interconnection, but CA's Comments are at least consistent with its
23 proposed language.

24 In contrast, CA's response to Staff's Interrogatory No. 9 tells a very different
25 story.²⁷ There, CA does not dispute that it is responsible for the facilities that carry

²⁷ See Exhibit PHP-8.

1 OS/DA, Mass Calling, and Third Party trunk groups on AT&T Florida's side of the POI.
2 Apparently, CA's only objection is to paying for 911 trunks because the public safety
3 agencies pay AT&T Florida for those trunks. But AT&T Florida is not proposing to
4 charge CA for 911 trunks. This issue is about the *facilities* over which trunks ride, and
5 the public safety agencies do not pay for the facilities between CA and AT&T Florida's
6 selective router.

7 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 37?**

8 A. The Commission should reject CA's language that would improperly make AT&T
9 Florida financially responsible for a portion of the facilities that carry CA's ancillary
10 services trunks (*i.e.*, OS/DA, E911, HVCI, and Third Party) and that directly conflicts
11 with other provisions in the ICA.

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

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

18 **Q. WHAT ARE THE PLF, PLU AND PIU FACTORS?**

19 A. They are percentages that CA will provide to AT&T Florida and that AT&T Florida will
20 use when it bills CA. The "PIU" factor represents the percent interstate usage. In the
21 context of facilities, the ICA refers to it as PIUE. PIUE is used to reflect that portion of a
22 facility that is used to carry interstate (as opposed to intrastate) traffic so that AT&T
23 Florida can properly bill from the interstate tariff rate table. There is also a PIU
24 associated with and applied to usage, which the ICA refers to as TPIU. "PLF" stands for

1 percent local facility. The PLF factor reflects the percentage of the intrastate use of
2 facilities that is local. "PLU" stands for percent local usage. The PLU factor reflects the
3 percentage of the intrastate traffic that is local. All of these factors are used to apportion
4 the charges between local, intrastate, and interstate rates to arrive at a composite bill for
5 mixed use facilities and trunks.

6 **Q. HOW OFTEN WILL CA PROVIDE THESE BILLING FACTORS TO AT&T**
7 **FLORIDA?**

8 A. Net. Int. section 6.13.3, which provides the terms and conditions for the jurisdictional
9 reporting process for the PLF, PLU and PIU billing factors, requires CA to provide the
10 billing factors quarterly.

11 **Q. WHAT HAPPENS IF CA FAILS TO SUPPLY THESE BILLING FACTORS**
12 **QUARTERLY?**

13 A. AT&T Florida has agreed to CA's proposed language that would address this situation.
14 If CA does not update the billing factors in a particular quarter, AT&T Florida will
15 assume that the factors did not change from the prior quarter and apply the most recent
16 factors when preparing its bills to CA.

17 **Q. DOES CA AGREE THAT THE ICA SHOULD PERMIT AT&T FLORIDA TO**
18 **AUDIT CA'S BILLING FACTORS?**

19 A. Yes. The parties have agreed to language in Net. Int. section 6.13.3.5 that provides the
20 framework for AT&T Florida to conduct an audit of CA's billing factors. Such language
21 is appropriate because AT&T Florida must rely on the factors CA supplies when AT&T
22 Florida bills CA for facilities and usage.

1 **Q. UNDER WHAT CIRCUMSTANCES WOULD AT&T FLORIDA CONDUCT**
2 **SUCH AN AUDIT?**

3 A. AT&T Florida would initiate an audit of CA's billing factors only if AT&T Florida had
4 reason to believe CA's factors were not accurate (based on sampled data) and the parties
5 were unable to resolve the discrepancies.

6 **Q. WHAT IS THE DISAGREEMENT CONCERNING WHO PAYS FOR AN**
7 **AUDIT?**

8 A. The parties agree that if the audit discloses that the factors CA provided were accurate,
9 AT&T Florida will bear the cost of the audit. The parties also agree that if the audit
10 discloses that the factors CA provided were overstated – which results in AT&T Florida
11 underbilling CA – CA will bear the cost of the audit. The disagreement concerns how to
12 quantify the inaccuracy as a result of which CA must bear the cost. AT&T Florida
13 proposes that CA be required to bear the cost if CA overstates a factor by more than 5%.
14 CA proposes that it be required to bear the cost if it overstates a factor to an extent that
15 results in underbilling of \$2500 per month or more.

16 **Q. WHY IS AT&T FLORIDA'S PROPOSAL MORE REASONABLE THAN CA'S?**

17 A. As a matter of basic common sense, it is more fair and reasonable to gauge the accuracy
18 or inaccuracy of the factors a CLEC provides on a percentage basis rather than on a fixed
19 basis of the sort CA proposes. If a CLEC overstates the percentage of its traffic that is
20 interstate by 20%, for example, that is a significant inaccuracy, regardless of the total
21 volume of the CLEC's traffic, and the CLEC should bear the cost of the audit that
22 revealed the inaccuracy. On the other hand, an overstatement that results in underbilling

1 by \$2500 may be either a huge overstatement or a trivial overstatement, depending on the
2 CLEC's traffic volumes.

3 In addition, CA is a new market entrant without a proven track record of
4 providing accurate billing factors. AT&T Florida should not be subjected to as much as
5 \$30,000 (or more) in annual losses before CA would be obligated to pay for the audit that
6 showed such underbilling.

7 **Q. WOULD AT&T FLORIDA INITIATE AN AUDIT TO "ARTIFICIALLY DRIVE**
8 **UP CA'S COSTS," AS CA IMPLIED IN ITS COMMENTS?**

9 A. No. It would be irrational for AT&T Florida to do so, because if AT&T Florida initiates
10 an audit and the audit shows CA's factors were accurate, AT&T Florida would bear
11 100% of the cost of the audit.

12 **Q. HOW SHOULD THE COMMISSION RULE ON ISSUE 42?**

13 A. The Commission should adopt AT&T Florida's threshold of 5% as the point at which CA
14 must reimburse AT&T Florida for the cost of an audit of CA's reported billing factors.

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

18 **ISSUE 43(ii): WHEN A BILLING DISPUTE IS RESOLVED IN FAVOR OF THE**
19 **BILLING PARTY, SHOULD THE BILLED PARTY BE OBLIGATED TO**
20 **MAKE PAYMENT WITH 10 BUSINESS DAYS OR 30 BUSINESS DAYS?**

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

22 **Q. WHAT IS THE PARTIES' DISPUTE IN ISSUE 43(i)?**

23 A. Although the parties have agreed in the GT&Cs that past due amounts are subject to both
24 interest and Late Payment Charges, CA has taken the position in connection with Net.

1 Int. section 6.13.7 that past due intercarrier compensation amounts should be subject only
2 to Late Payment Charges, and not to interest. AT&T Florida disagrees. Past due
3 intercarrier compensation amounts, just like any other past due amounts, should be
4 subject to interest charges as well as LPCs.

5 **Q. WHAT IS THE DIFFERENCE BETWEEN INTEREST AND LATE PAYMENT**
6 **CHARGES?**

7 A. Interest and late payment charges serve different purposes. Interest is compensation for
8 the time value of money, while late payment charges are intended as an incentive to
9 encourage prompt payment.

10 **Q. ARE INTEREST AND LATE PAYMENT CHARGES MUTUALLY EXCLUSIVE?**

11 A. No. Counsel has brought to my attention a decision by a Florida Court of Appeals noting
12 that the trial court, in granting judgment for a principal amount owed, also entered
13 judgment for interest and late payment fees.²⁸ Thus, the two are not mutually exclusive
14 under Florida law.

15 **Q. IN WHICH SECTIONS OF THE GT&CS DID THE PARTIES AGREE TO THE**
16 **IMPOSITION OF BOTH INTEREST AND LATE PAYMENT CHARGES ON**
17 **ALL PAST DUE AMOUNTS?**

18 A. Agreed GT&C section 11.3 provides that LPCs apply to past due amounts,²⁹ and agreed
19 GT&C section 11.4 provides that interest charges accrue on unpaid amounts.³⁰ Under

²⁸ *Verneret v. Foreclosure Advisors LLC*, 45 So. 3d 889, 891 (Fla. Ct. App. 3d Dist. 2010).

²⁹ GT&C section 11.3 states: "A Late Payment Charge will be assessed for all Past Due payments as provided below, as applicable."

³⁰ GT&C section 11.4 states: "If any charge incurred by **AT&T-21STATE** under this Agreement is Past Due, the unpaid amounts will accrue interest from the day following the Bill Due Date until paid."

1 these agreed provisions, the Billing Party is entitled to accrue both late payment charges
2 and interest on the disputed amounts while a dispute is pending.

3 **Q. WHAT IS THE PARTIES' DISPUTE IN ISSUE 43(ii)?**

4 A. Once a dispute regarding intercarrier compensation is resolved, AT&T Florida proposes
5 that the billed party pay the Billing Party within ten business days (at least two weeks).
6 CA proposes that the billed party have 30 business days (at least six weeks).

7 **Q. WHY IS TEN BUSINESS DAYS MORE REASONABLE THAN 30 BUSINESS**
8 **DAYS?**

9 A. The billed party will have already waited months (or longer) to be paid while the dispute
10 ran its course. Following resolution of the dispute, two weeks is a reasonable period of
11 time for the billed party to make payment; the Billing Party should not have to wait six
12 weeks to be paid what it is owed. CA asserted in its Comments that it may need time to
13 secure financing so that it can pay AT&T Florida if it is found responsible for the billed
14 charges. However, CA would know throughout the dispute period what charges were
15 accruing, and it should plan for that eventuality. CA should not need additional time to
16 secure financing for payments it could have (and, arguably, should have) reasonably
17 anticipated, and it is not reasonable for AT&T Florida to have to wait six weeks
18 following the closure of the dispute before it is paid what it is due.

19 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUES 43(i) AND 43(ii)?**

20 A. The Commission should i) adopt AT&T Florida's language stating that both interest and
21 late payment charges may accrue on unpaid intercarrier compensation; and ii) find that
22 ten business days is the time within which the billed party shall pay the billing party

1 following resolution of a dispute in favor of the billed party and adopt AT&T Florida's
2 language so stating.

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

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

6 **Q. WHAT IS AT ISSUE IN LNP SECTION 3.1.4?**

7 A. The parties agree that when a ported number becomes vacant, the number must be
8 released to the carrier that owns the switch where the number resides, but the parties
9 disagree about how to define what is meant by "when a ported number becomes vacant."
10 AT&T Florida proposes that the telephone number is vacant when it is "no longer in
11 service with the original End User," while CA proposes that it is vacant only when it is
12 "no longer assigned to an End User."

13 To illustrate the difference between the two proposals, assume that AT&T Florida
14 customer Ms. Smith switches to CA for local phone service and retains the same phone
15 number she had with AT&T Florida – a number that resides in AT&T Florida's switch.
16 Assume further that Ms. Smith then moves to Europe and discontinues her local phone
17 service in Florida. Under AT&T Florida's language, Ms. Smith's number at that point
18 becomes vacant and must be released back to AT&T Florida, because the number is no
19 longer in service with the original end user – Ms. Smith. Under CA's language – and as
20 CA makes clear in its Comments on this issue – the number could instead be conveyed
21 (apparently by Ms. Smith, according to CA's Comments) to another end user, and it
22 would not be regarded as vacant, and so be released back to AT&T Florida, until it was

1 no longer assigned to any end user. As I will explain, CA's approach is based on a
2 fundamental misunderstanding of how number porting works and should be rejected.

3 **Q. HOW ARE TELEPHONE NUMBERS ADMINISTERED?**

4 A. The North American numbering administrator assigns telephone number codes NXXs³¹
5 to carriers,³² and until /unless a carrier returns an unneeded NXX to the administrator, the
6 NXX "belongs to" (or is "owned by") that carrier. When establishing local exchange
7 service for a new end user, the carrier selects a telephone number from its available
8 inventory of numbers (from a code assigned to it by the numbering administrator) to use
9 in providing the service. Informally, one might say that the number is "assigned" to the
10 end user, but that is not technically correct; the number is assigned to the code owner (the
11 carrier), which associates that number with a particular end user's local exchange service.

12 **Q. HOW DOES LOCAL NUMBER PORTABILITY FACTOR INTO NUMBER**
13 **ADMINISTRATION?**

14 A. Local number portability ("LNP") permits an end user to change local service provider
15 without having to change the associated telephone number.³³ Subject to certain

³¹ As a result of telephone number pooling, which was instituted as a number conservation measure, the numbering administrator may also assign codes in thousand number blocks (NXX-X). Thus, there may be different carriers that share an NXX, but the NXX-X is always assigned to only one carrier. For the purpose of my testimony, I will refer to NXX code, NXX, or simply code, to mean either NXX or NXX-X.

³² Recently, the FCC determined that telephone numbers could also be assigned to VoIP providers, which are not telecommunications carriers. That distinction is not relevant to my testimony on the assignment of telephone numbers, and I use the term carriers more generally to include VoIP providers.

³³ When local competition was in its infancy, an end user would have to change his telephone number each time he changed local service provider. This was an obvious impediment to the development of competition that was overcome with the advent of LNP.

1 geographic limitations that are not meaningful here,³⁴ an end user can change his local
2 service provider any number of times while retaining his telephone number. Regardless
3 of the local service provider serving the end user using the original telephone number,
4 however, the number is still officially “owned” by the carrier to which the number
5 administrator assigned the NXX. That is why there must be an LNP database query to
6 identify how to route a call to a ported number; without that query and the resulting
7 routing instructions, a call will be default routed (*i.e.*, misrouted) to the carrier that owns
8 the code.

9 **Q. WHAT IS WRONG WITH CA’S LANGUAGE?**

10 A. CA’s language states that a ported telephone number will not be considered vacant as
11 long as the number is “assigned to an End User.” As expressed in its Comments, CA
12 begins with the mistaken premise that the end user owns the ported telephone number.
13 As I have explained, the telephone number is assigned to a carrier, not to an end user.
14 The end user has a right to use that ported telephone number only while he maintains
15 service associated with that number (including any subsequent ports of the number to
16 different local service providers). When that end user no longer subscribes to telephone
17 exchange service using the ported telephone number, the number becomes vacant and
18 must be released back to the NXX code owner for eventual reuse. CA’s language would
19 improperly allow CA to maintain control of the ported number as long as CA used it for
20 *any* end user.

³⁴ Mr. Neinast addresses in his testimony for Issue 46 the parties’ dispute regarding the extent to which telephone numbers may be ported outside a geographic area.

1 **Q. CA'S COMMENTS PRESUMED THAT AN END USER CAN "CONVEY" HIS**
2 **TELEPHONE NUMBER TO ANOTHER END USER. CAN AN END USER DO**
3 **SUCH A THING?**

4 A. No. In the illustration I used earlier, for example, when Ms. Smith moves to Europe she
5 cannot somehow convey her phone number to a friend. An end user does not control his
6 telephone number and has no right to "convey" it to anyone.

7 **Q. BUT WHAT IF A CUSTOMER SELLS HIS BUSINESS. WOULD THE NEW**
8 **OWNER BE ENTITLED TO USE THE SAME TELEPHONE NUMBER UNDER**
9 **THE SAME BUSINESS NAME?**

10 A. Possibly. If the local exchange service was established in the name of the business, the
11 ported telephone number would be associated with the business name. If the current
12 business owner sells his business, including the business name, there would be no reason
13 for the ported telephone number to be uncoupled from the business (unless the new
14 owner wanted a different telephone number). In fact, AT&T Florida would not even be
15 aware of the sale. If, however, the local exchange service was established in the name of
16 the owner (and not the business), the new owner (who has a different name) could not use
17 the existing ported telephone number for service in a different name once the previous
18 owner's service was disconnected.

19 **Q. CA'S COMMENTS DESCRIBED THE SCENARIO WHERE AN AT&T**
20 **FLORIDA END USER PORTED HIS TELEPHONE NUMBER TO CA, AND**
21 **IMPLIED THAT CA WOULD BE COMPETITIVELY HARMED BY AT&T**
22 **FLORIDA'S LANGUAGE. IS THAT TRUE?**

23 A. No. The same rules apply no matter what carrier owns the NXX code. I think an
24 example would be helpful. Let's suppose that CLEC A is the NXX code owner, and
25 CLEC A installed local exchange service for End User A using a telephone number from
26 that code. End User A then elects to move to AT&T Florida and ports his number over to

1 AT&T Florida. CA subsequently wins End User A to its service, so End User A again
2 ports his number, this time to CA. When End User A disconnects his local exchange
3 service because he is moving out of the area, his telephone number becomes vacant. At
4 this point, the telephone number is released back to the NXX code owner, which is CLEC
5 A.

6 The same steps would apply in reverse if CA was the code owner and installed the
7 original service for End User A. When End User A elects to go with AT&T Florida for
8 local exchange service and retain his telephone number, the number will be ported to
9 AT&T Florida. When End User A disconnects his service, AT&T Florida will release
10 that vacant telephone number back to the code owner, in this case CA. There is nothing
11 discriminatory or anti-competitive about AT&T Florida's example used to demonstrate
12 when a ported number is vacant.

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

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

17 **ISSUE 60: SHOULD COMMUNICATIONS AUTHORITY BE PROHIBITED FROM**
18 **OBTAINING RESALE SERVICES FOR ITS OWN USE OR SELLING**
19 **THEM TO AFFILIATES?**

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

21 **Q. PLEASE DESCRIBE THIS ISSUE.**

22 A. Section 251(c)(4) of the 1996 Act requires AT&T Florida to sell telecommunications
23 services to CA at a wholesale discount for resale by CA. Because the purpose of the

1 resale requirement is to allow CA to compete with AT&T Florida by reselling to end
2 users services that CA buys from AT&T Florida at wholesale rates, AT&T Florida
3 proposes language for Resale section 3.2 that states that AT&T Florida has no obligation
4 to make services available at the wholesale discount to CA for its own use or for the use
5 of an affiliate. CA opposes AT&T Florida's proposed language.

6 **Q. CA STATED IN ITS COMMENTS THAT IT MAY RESELL AT&T FLORIDA'S**
7 **SERVICES TO ANY ENTITY IT CHOOSES AS LONG AS IT DOES NOT**
8 **VIOLATE THE TERMS OF THE ICA. DO YOU AGREE?**

9 A. Generally, yes.³⁵ That is the whole point of the ICA – to provide the rates, terms and
10 conditions pursuant to which CA may obtain services from and interconnect with AT&T
11 Florida for CA's provision of local telecommunications service to its customers. And
12 that is why it is important what the ICA does and does not permit. For example, the
13 parties have agreed in Resale section 3.6 that CA may not resell AT&T Florida's
14 residential service to business customers, and so CA may not do so. However, if the ICA
15 did permit CA to resell residential service to business customers, CA could do so because
16 that would not violate the terms of the ICA.

17 **Q. WHY SHOULD THE ICA PROHIBIT CA FROM OBTAINING RESALE**
18 **SERVICES FOR ITS OWN OR ITS AFFILIATES' USE OR OTHERWISE**
19 **AVOIDING AT&T FLORIDA'S RETAIL TARIFF?**

20 A. Section 251(c)(4)(B) of the 1996 Act prohibits AT&T Florida from imposing.
21 "unreasonable or discriminatory ... limitations on, the resale of ... telecommunications

³⁵ An ICA is intended to be comprehensive, but it is not possible for an ICA to clearly state everything that is not permitted. Any such omissions do not necessarily mean that certain actions are therefore automatically permitted. For example, there is nothing in the ICA that says CA may not cut down trees on AT&T Florida's property, but CA is clearly not permitted to do so.

1 service.” AT&T Florida is permitted, however, to impose reasonable, nondiscriminatory
2 limitations on resale. The limitation AT&T Florida proposes here is reasonable and non-
3 discriminatory, and has been approved by a number of state commissions. Furthermore,
4 AT&T Florida’s position is supported by the FCC.

5 **Q. WHAT HAS THE FCC SAID ON THE SUBJECT?**

6 A. In its 1996 *Local Competition Order*, the FCC stated (at ¶ 875), “Section 251(c)(4) does
7 not require the incumbent LECs to make services available for resale at wholesale rates to
8 parties who are not ‘telecommunications carriers’ *or who are purchasing services for*
9 *their own use.*” (Emphasis added). Paragraph 874 further supports AT&T Florida’s
10 position: “Section 251(c)(4) does not entitle subscribers to obtain services at wholesale
11 rates for their own use.” The FCC’s language is clear: AT&T Florida must offer
12 services for resale to CA, but it is not required to provide services to CA *as an end user* at
13 a wholesale rate.

14 **Q. WHY IS IT REASONABLE TO PROHIBIT CA FROM BUYING SERVICES**
15 **FROM AT&T FLORIDA AT A WHOLESALE DISCOUNT FOR ITS OWN USE**
16 **OR ITS AFFILIATE’S USE?**

17 A. The purpose of section 251(c)(4) is to enable CLECs to compete with the ILEC by
18 purchasing the ILEC’s services at wholesale rates and reselling the services to end users
19 at a profit. That purpose would not be served by allowing CA to buy services from
20 AT&T Florida at a wholesale discount for its own or its affiliates’ use. As other state
21 commissions have concluded:

- 22 • “The Panel adopts [the ILEC’s] proposed language [providing that
23 Sprint may purchase resale services only for sale to a person other than
24 Sprint, its subsidiaries and affiliates]. . . . [T]he Panel is of the opinion
25 that federal law clearly provides guidance that the 1996 Act did not

1 require the ILEC to provide services to other carriers at wholesale
2 rates for their own internal use. This does not mean that Sprint will
3 not have access to the telephone lines it needs to establish its business,
4 but simply that it must purchase them at retail rates, like every other
5 competitive local exchange carrier and end user.”³⁶
6

7 • “We read 251(c)(4) . . . as not requiring [the ILEC] to sell Sprint lines
8 at wholesale rates for its own use. . . . Neither the Act nor the FCC
9 Order explicitly requires [the ILEC] to sell Sprint such lines at
10 wholesale rates and we believe competition will not be impaired by
11 Sprint’s purchase of its own lines at retail rates.”³⁷
12

13 • “Prohibiting Sprint from using resale services for its own corporate use
14 or use by its corporate affiliates is reasonable and supported by the
15 Act.”³⁸

16 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 60?**

17 A. The Commission should adopt AT&T Florida’s language in Resale section 3.2.

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

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

21 **Q. WHAT IS THE PARTIES’ DISPUTE IN ISSUE 61?**

22 A. The parties disagree as to how the ICA should describe the detailed billing AT&T Florida
23 will make available to CA for resale services.

24 **Q. WHAT IS AT&T FLORIDA’S PROPOSAL REGARDING DETAILED BILLING**
25 **FOR RESELLER SERVICES?**

³⁶ Decision of the Arbitration Panel, Docket No. 6055-MA-100, *Petition of Sprint Communications Company per § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Wisconsin Bell, Inc.* (Wisc. Pub. Serv. Comm’n Jan. 15, 1997).

³⁷ Arbitration Decision, Cause No. 40625-INT-01, *Sprint Communications Company L.P.’s Petition for Arbitration for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Indiana Bell Telephone Co.* (Ind. Util. Reg. Comm’n Jan. 9, 1997).

³⁸ Decision of Arbitration Panel, Case No. U-11203, *Petition for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Michigan Bell Tel. Co.* (Mich. Pub. Serv. Comm’n Dec. 12, 1996).

1 A. AT&T Florida proposes the following language in Resale section 5.2.1, to which CA
2 objects:

3 AT&T-21STATE shall provide CLEC with the option to obtain
4 detailed monthly billing detail which, at a minimum, meets all
5 regulatory requirements for detailed billing and which provides the
6 telephone number and rate of each resold line billed for that month,
7 along with any optional features for each line and the rate associated
8 with each optional feature billed.

9 **Q. WHAT IS THE SOURCE OF AT&T FLORIDA’S PROPOSED LANGUAGE?**

10 A. CA itself proposed nearly identical language during negotiations. The only change
11 AT&T Florida made to CA’s proposal was a slight modification to simply reflect that it is
12 CA’s option whether to request detailed billing. I do not understand why CA rejected its
13 own language and proposed something different when it filed its petition.

14 **Q. HOW WOULD CA REQUEST DETAILED BILLING?**

15 A. CA may request detailed billing for its resale customers via its CLEC Profile. The CLEC
16 Billing Guide is available on AT&T’s CLEC Online website.³⁹

17 **Q. DOES AT&T FLORIDA CHARGE FOR DETAILED BILLING?**

18 A. No. AT&T Florida does not charge for detailed billing as described in section 5.2.1.
19 However, CA also has the option of obtaining a daily usage file (“DUF”) for its resale
20 customers, for which AT&T Florida charges the rates set forth in the Pricing Schedule.
21 CA has not contested these rates.

22 **Q. WHAT IS AT&T FLORIDA’S OBJECTION TO CA’S PROPOSED LANGUAGE?**

³⁹ http://wholesale.att.com/reference_library/guides/html/understanding_bill.html

1 A. CA's language referencing FCC Order 99-72 is inappropriate for an ICA. The FCC's
2 billing rules established in that order (*i.e.*, 47 C.F.R. §§ 64.2400 and 2401) relate to retail
3 bills to consumers, not resale bills to other carriers.

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

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

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

11 **Affected Contract Provision: Pricing Sheet**

12 **Q. WHICH DISPUTED PRICES DO YOU ADDRESS?**

13 A. I address prices related to local interconnection.

14 **Q. HAS THE COMMISSION PREVIOUSLY APPROVED COST-BASED PRICES**
15 **FOR THE INTERCONNECTION RATE ELEMENTS CA CHALLENGES?**

16 A. Yes. The Commission previously approved AT&T Florida's local interconnection rates
17 in Docket No. 990649-TP, Order No. PSC-01-2051-FOF-TP. There is one exception,
18 namely DS0 trunk installation charges.

19 **Q. PLEASE EXPLAIN THE SOURCE OF AT&T FLORIDA'S DS0 TRUNK**
20 **INSTALLATION CHARGES.**

21 A. AT&T Florida's switches are equipped with dedicated DS1 trunk ports for
22 interconnection trunking. DS1 trunk ports can accommodate up to 24 individual DS0
23 trunks, and AT&T Florida charges for installation of trunks on an individual basis. Thus,

1 if a CLEC requires only 12 trunks, AT&T Florida assesses nonrecurring charges to install
2 12 trunks on a single order (one initial at \$21.73, plus 11 additional at \$8.19) rather than
3 for the entire DS1 trunk port. The installation trunk charges per DS0 on the Pricing
4 Sheets are based on an April 2000 cost study for DS1 trunk ports, divided by 24.⁴⁰
5 AT&T Florida was unable to identify the Commission order number approving these
6 charges. The DS0 interconnection trunk installation charges AT&T Florida proposes for
7 CA's ICA are the same charges AT&T Florida assesses to all CLECs in Florida.

8 **Q. DOES CA HAVE ANY SUPPORT FOR ITS PROPOSED RATES FOR LOCAL**
9 **INTERCONNECTION?**

10 A. To the best of my knowledge, no; certainly, CA has not provided any such support so far.

11 **Q. WHAT LOCAL INTERCONNECTION PRICES SHOULD THE COMMISSION**
12 **ADOPT FOR CA'S ICA?**

13 A. The Commission should adopt AT&T Florida's rates. Indeed, the Commission has
14 previously ruled that "the rates we established in Docket Nos. 990649-TP and 000649-TP
15 are the appropriate rates for (B) Network Elements, (C) Interconnection, (E) LNP/INP,
16 (F) Billing Records, and (G) Other." Order No. PSC-02-0413-FOF-TP (issued March 26,
17 2002 in Docket No. 001305-TP, footnotes omitted). AT&T Florida provided additional
18 supporting detail in its response to Staff Interrogatory No. 76 (Exhibit 4, CA Issues 260-
19 272).

20 **Q. BUT ISN'T CA ENTITLED TO ARBITRATE NEW RATES IN THIS**
21 **PROCEEDING?**

⁴⁰ The DS1 trunk port nonrecurring cost is \$521.58 for the first DS1 and \$196.50 for each additional DS1 installed at the same time. Dividing by 24 yields the first and additional DS0 trunk charges of \$21.73 and \$8.19, respectively, set forth in the Pricing Sheets.

1 A. No. Like almost all state commissions in the United States, this Commission establishes
2 TELRIC-based rates in generic dockets in which all interested parties are allowed to
3 participate. Docket Nos. 990649-TP and 000649-TP were such dockets. The
4 Commission has appropriately refused to reconsider in a two-party arbitration the rates it
5 established in those dockets, and it should do so again here. Docket No. 041464-TP, for
6 example, was an arbitration between Florida Digital Networks, Inc. (“FDN”) and Sprint
7 Florida, whose UNE rates – like AT&T Florida’s UNE rates –were established by the
8 Commission in Docket No. 990649-TP. *See* Order No. PSC-06-0027-FOF-TP (Jan. 10,
9 2006), at 30. FDN sought to revisit those rates, and the Commission declined, stating:

10 FDN has continuously argued throughout this proceeding that it has an
11 unconditional right under Section 252 of the Act to arbitrate UNE rates
12 in this proceeding, however this argument alone does not necessarily
13 warrant this Commission revisiting its earlier decisions in the Sprint
14 UNE Docket. To revisit this Commission’s pricing decisions in the
15 Sprint UNE Docket, without a showing of changed circumstances,
16 would nullify the basic rationale for consolidating such proceedings ...

17 We agree with Sprint’s position that the UNE rates approved in Docket
18 No. 990649B-TP should be the rates incorporated in the new
19 interconnection agreement between FDN and Sprint ... We find that it
20 would be discriminatory to allow FDN to arbitrate different rates than
21 what has been approved in Docket No. 990649-TP. In conclusion, we
22 find that the use of a generic proceeding rather than 73 separate
23 arbitrations was more practical and efficient. It would be impossible
24 for this Commission to effectively and efficiently arbitrate 74 separate
25 interconnection agreements.

26 *Id.* at 31.

27 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

28 A. Yes.

1 **I. INTRODUCTION**

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

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

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

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

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

10 A. Yes. I have the following exhibits:

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

23

1 **II. DISCUSSION OF ISSUES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³ Ray Direct at p. 16, lines 4-10.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 A. No.

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

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

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

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

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

5 A. The argument does not hold water, because it is based on the mistaken assumption that an
6 ICA with a five-year term will necessarily be available for adoption for five years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 A. The parties have resolved it.

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

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

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

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

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

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

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

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

10 **Affected Contract Provisions:**

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

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

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

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

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

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

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

⁹ Ray Direct at p. 20, line 15.

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

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

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

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

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

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

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

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

23 **Status of Issues 12 and 24**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 A. No.

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

4 A. The following email sequence ensued:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **The substantive disputes**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 A. The parties have resolved it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹³ Ray Direct at p. 30, lines 11-12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 A. I agree with the basic premise that AT&T Florida cannot charge for Entrance Facilities
4 when CA does not lease Entrance Facilities. But it seems evident when Mr. Ray's
5 testimony is read within the context of CA's responses to Staff's discovery requests¹⁶ that
6 CA does not want to be charged for CA's use of *any* facilities within AT&T Florida's
7 central office. Of course, that position is unrelated to Entrance Facilities because
8 Entrance Facilities always extend outside the central office. Mr. Ray says nothing further
9 that I did not fully address in my Direct Testimony for this issue (at pp. 66-70).

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

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

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

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

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

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

¹⁶ See Exhibits PHP-6 and PHP-7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 A. The parties have resolved it.

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

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

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

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

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

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

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

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

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

14 **Q. PLEASE EXPLAIN.**

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

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

¹⁸ Pellerin Direct at pp. 85-88.

¹⁹ Pellerin Direct at p. 87.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **Affected Contract Provision: Pricing Sheet**

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

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

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

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

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

14 A. Yes.

1 from the bill date or 20 days from when the bill was
2 received is actually sooner.

3 Q So this really is about when late fees would
4 apply; is that correct?

5 A Yes. There's a lot of terms in the agreement
6 that are associated with timely bill payment.

7 Q So it's a -- it would be a question of coding
8 the system to not charge late fees depending on the day
9 the bill was deemed to have been sent or received?

10 A I would say that's overly simplistic because
11 that might be the appropriate time. If that happened to
12 be -- part of the trouble I'm having explaining this is
13 because CA's proposal is, is rather convoluted. It's 20
14 days after when the bill was received or 30 days from
15 the bill due date, whichever is later. And so sometimes
16 30 days from the bill due date might be later, in which
17 case that would be the appropriate time to trigger any
18 treatment of an unpaid bill and other times it would not
19 be. And because of that, I'm not aware of any mechanism
20 that could be done in our systems that would make that
21 comparison because we have no way of knowing precisely
22 when CA received the bill in order to figure out when 20
23 days from that date is.

24 Q I'm just still trying to understand what the
25 substantial revamping of the system might entail.

1 **A** I don't know that it could be done. I think
2 it might end up having to be something that was done
3 manually where there would have to be an override to the
4 mechanized billing system that said, well, for CA don't
5 automatically identify a bill as being late when it's
6 not paid by the bill due date. In fact, make some kind
7 of an assessment on a manual basis once we actually
8 figure out when CA received the bill, which we have no
9 way of knowing.

10 **Q** So this would also apply then in effect to
11 AT&T's determination as to whether CA was in default or
12 in breach of the agreement for failure to pay in terms of
13 setting timelines?

14 **A** That would be one factor in identifying
15 whether there were undisputed payments that were not
16 made on time.

17 **Q** Okay. Are you aware that Communications
18 Authority's proposed language has been in lots of other
19 BellSouth and AT&T Florida interconnection agreements in
20 the past?

21 **A** I am not aware that it has been in lots of
22 other agreements in the past. Mr. Ray identified
23 three contracts that he represented included that
24 language. Of those three, one of them had language that
25 operated in a similar fashion. The others did not. So

1 I would certainly not characterize it as being lots of
2 other agreements have those terms.

3 Q Okay. Are you aware that AT&T and its
4 affiliates demand 60 days for the payment to CLECs for
5 intercarrier compensation billing?

6 A I'm not aware of that, no.

7 Q Are you aware that AT&T and its affiliates
8 dispute all late payment charges assessed by CLECs
9 regardless of whether or not AT&T timely paid the CLEC's
10 bill?

11 A I have no knowledge about those, and I didn't
12 testify about anything like that.

13 Q Okay. Thank you. Let's move to Issue 13,
14 please.

15 A I'm sorry. I'm having trouble hearing you.
16 Issue 13?

17 Q I'm sorry. Yeah. Issue 13.

18 A Which part of Issue 13?

19 Q Let's do -- let's start with Issue 13d, late
20 payment charges apply only to undisputed charges.

21 A Okay.

22 Q Is it common practice for CLECs to provide
23 remittance information on their payments?

24 A Yes.

25 Q Does AT&T always properly apply the CLEC

1 provider remittance information when posting CLEC
2 payments to AT&T billing accounts? Meaning if it says
3 this is to be applied to band whatever, does AT&T make
4 sure that those payments are posted to that band?

5 **A** To the extent that its systems can process
6 that information, yes.

7 **Q** So there are occasions where that remittance
8 information provided by the CLEC is not reflected in
9 AT&T's billing systems?

10 **A** There are occasions, and I would say that
11 these -- well, let me, let me back up. There's, there's
12 two types of payments that we're talking about. One of
13 them is a manual payment of a paper check, and the other
14 is an electronic payment through the ACH system. In
15 both cases, we have to have the proper remittance
16 information in order to post those accounts properly.

17 When a payment is made manually -- I'm
18 sorry -- manually by a paper check, it comes into a
19 system called a lockbox that basically opens the
20 envelope and feeds the payment into a system. And if
21 everything is there, it processes through automatically
22 and goes right in without intervention.

23 If the system can't do that, it falls out for
24 a manual treatment. And, again, then the, the rep will
25 key in information into the system manually. And as

1 long as the proper remittance information is there, it
2 will post. With an electronic payment, it should come
3 in with the remittance information. And if it's
4 properly populated through the systems, then it will
5 post. And if not, then it falls out with an error for
6 manual review.

7 Q Okay. If it falls out with that situation, how
8 does AT&T apply the payment? Where does it go? Does
9 AT&T apply the payment to the oldest balance, or do they
10 follow up with the CLEC and ask where they would like the
11 payment to go, or how does it work?

12 A Typically it will, it will -- we will not post
13 it to any of the accounts because we won't know how much
14 to apply to what account. So it goes into a, I'll call
15 it a holding bucket pending resolution of the
16 investigation as to where it would -- where it should be
17 posted and by how much.

18 Q So, in effect, AT&T has the money at its
19 disposal; correct?

20 A I would not say it was at its disposal. It's
21 in a holding bucket.

22 Q How are these investigations conducted to
23 determine where the money should be applied? Is it just
24 an email to the CLEC saying, hey, where should I put this
25 or --

1 **A** It could be an email to the CLEC saying, hey,
2 where do I put it? I think typically we prefer to do a
3 phone call so that there can actually be a live dialogue
4 and get it resolved quickly. I think there was some
5 discovery on that as well. AT&T's response to staff
6 interrogatory no. 140 speaks fairly extensively to this
7 issue.

8 **Q** Okay. Thank you very much.

9 Okay. Let's move to Issue 14a, please.

10 **A** Okay.

11 **Q** Would you say a customer channel interface is
12 the same thing as a local channel facility?

13 **MR. FRIEDMAN:** I'm going to object on the
14 ground that the question is beyond the scope of
15 Ms. Pellerin's testimony on Issue 14a, I believe. And
16 if counsel can point me to where in the testimony she
17 talks about that subject, then I would withdraw the
18 objection.

19 **MR. TWOMEY:** Just a moment, please.

20 (Pause.)

21 Okay. I'm going to withdraw that question for
22 now.

23 **COMMISSIONER BRISÉ:** Okay.

24 **BY MR. TWOMEY:**

25 **Q** If you would, let's move to Issue 14b.

1 **A** Okay.

2 **Q** And this is regarding ASR -- I'm sorry --
3 access service request supplements. Have you reviewed
4 Mr. Ray's testimony about the delays that he has
5 experienced with AT&T regarding the interconnection
6 orders?

7 **A** I did read his testimony regarding trunk
8 orders for Terra Nova.

9 **Q** I believe Mr. Ray indicated that AT&T did not
10 compensate the CLEC for any of these delays. Assuming
11 that the testimony is true, don't you think AT&T should
12 compensate Communications Authority for those delays?

13 **A** I can't speak to any of his experience or what
14 he represents as his experience with trunk orders with
15 Terra Nova.

16 **Q** So if there are -- so if AT&T charges order
17 modification charges to a CLEC for delays that AT&T
18 actually admittedly caused, do you think it's appropriate
19 for AT&T to charge for those?

20 **A** I don't think that question is relevant to the
21 language that's in dispute here for Issue 14b. What
22 we're talking about here is a situation where there is a
23 trunk group that is either oversized, which means it's
24 underutilized, or it's undersized, which means it's
25 overutilized, and there has been a trunk order to

1 service that trunk group to make it more appropriately
2 sized so that either there isn't calls being blocked or
3 there isn't a large amount of capacity that's being
4 wasted.

5 And so when a trunk servicing order comes in
6 like that, then it makes sense for the parties to have
7 a conversation and agree whether that trunk order will
8 appropriately size that trunk group.

9 Now, depending on what's being requested, it
10 might take more than two days to have that
11 conversation. For example, if there was a request to
12 make a dramatic change in the size of the trunk group
13 and one party's traffic data did not represent that
14 that would be an appropriate change, then the parties
15 might spend some time sharing traffic data and coming
16 to a meeting of the minds about what is the appropriate
17 size for that trunk group.

18 While that takes place, the trunk order is on
19 hold until the parties can agree about whether, in
20 fact, the order should be processed as it was placed,
21 or whether it should be canceled, or whether it should
22 be done to a different size. Once that is completed,
23 then the trunk order can be processed. If that
24 discussion takes longer than two days, it could be that
25 the trunk due date that was established with the

1 request for the trunk order could not be met. In fact,
2 it might actually be after the due date of the trunk
3 order. And so in that situation, it's entirely
4 appropriate that a supplemental ASR would be issued to
5 reestablish the due date for that trunk group sizing
6 change.

7 I would not characterize any of that
8 discussion as being AT&T's fault. There's no fault.
9 It's simply two companies doing business in order to
10 right size the trunk network.

11 Q Okay. I understand the -- perhaps we're having
12 a definitional issue. Are there other types of trunk
13 servicing orders in your mind? Are you only -- or is
14 this only the issue of upgrading or downgrading trunk
15 size?

16 A That is what trunk servicing is.

17 Q Okay. So that's for -- that takes care of
18 14b(i). For 14b(ii) the question is should AT&T Florida
19 be obligated to process Communications Authority's ASRs
20 at no charge? My questions now and previously were
21 actually relating to that particular subquestion.

22 A I just want to look at the contract language
23 for a moment.

24 **MR. FRIEDMAN:** Well, I will interpose an
25 objection, and the objection is that the question, as I

1 heard it, isn't comprehensible. Ms. Pellerin, if you
2 understand what question you're being asked, go ahead
3 and answer.

4 **MR. TWOMEY:** I'm sorry. I haven't asked a
5 question yet about, about this.

6 **MR. FRIEDMAN:** Okay.

7 **THE WITNESS:** That explains why I didn't
8 understand the question.

9 **MR. FRIEDMAN:** You thought he'd asked a
10 question also.

11 **THE WITNESS:** I did, and I didn't understand
12 it.

13 **COMMISSIONER BRISÉ:** I think it's probably
14 just a placeholder as to where we are in the testimony.

15 **BY MR. TWOMEY:**

16 **Q** Okay. So is it your position that this issue
17 is limited to network interconnection, Section 4.6.4?

18 **A** Yes.

19 **Q** Is it your position that Section 4.6.4 only
20 addresses trunk servicing orders?

21 **A** Yes. Section 4.6 of the network
22 interconnection attachment is all about trunk servicing.

23 **Q** And as, as you've said recently, trunk
24 servicing only involves rearrangements, shifting traffic
25 from one trunk group to the other?

1 **MR. FRIEDMAN:** Objection. That does not
2 correctly represent the testimony. There was no
3 testimony about moving traffic from one trunk to
4 another.

5 **BY MR. TWOMEY:**

6 **Q** If I could direct your attention to your
7 rebuttal testimony, page 7, lines 4 and 5 -- I'm sorry --
8 3, 4, and 5.

9 **A** Yes.

10 **Q** Can you read the sentence starting, "This is
11 particularly true"?

12 **A** "This is particularly true in the case of
13 trunk orders associated with CA's rearrangements that
14 would occur, for example, when CA shifts traffic from
15 one trunk group to another." I would like to put this
16 into the context of my rebuttal.

17 **Q** Please do.

18 **A** My rebuttal was focused on responding to the
19 direct testimony that Mr. Ray provided. It appeared
20 from Mr. Ray's testimony that he was intending that AT&T
21 would never charge Communications Authority for any ASR
22 associated with any type of trunk order ever. And so
23 even though Section 4.6 of the network interconnection
24 attachment is associated with trunk servicing, it
25 appeared to me that Communications Authority would look

1 to expand the interpretation of that language to include
2 all trunk orders, which is also consistent with their
3 proposal that the trunk charges in the pricing sheet be
4 zero.

5 Q Wasn't Mr. Ray actually testifying in that
6 situation about local interconnection orders, not just
7 trunk servicing?

8 A He was -- as I recall, he was talking about
9 local interconnection trunk orders that might or might
10 not be trunk servicing related.

11 Q As -- his testimony was talking about one
12 specific instance where there were delays maybe a dozen
13 times caused by AT&T, and each time they get charged an
14 order modification charge. Now, are you saying that your
15 testimony here does not relate to that situation or is
16 not applicable?

17 A The challenge that I'm having is that I was
18 not in a position to confirm or otherwise verify his
19 story. And whatever took place with Terra Nova is
20 pursuant to the Terra Nova interconnection agreement,
21 which is not relevant to the language that we're
22 negotiating and arbitrating for here.

23 It is AT&T's position for this contract that
24 service order charges are appropriate for all ASRs.
25 And, in fact, in the pricing schedule, Section 1.7.4,

1 Communications Authority has agreed to language that
2 they will pay for all service orders. So I have a
3 challenge putting his trunk story with Terra Nova into
4 the mix of what we're doing here with Communications
5 Authority.

6 Q So also on page 7 of your rebuttal testimony,
7 lines 13, 14 -- or 12, 13, and 14, you say the Commission
8 should reject CA's language that would obligate AT&T
9 Florida to process CA's trunk orders for free. I'm
10 wondering does that also include when AT&T has required
11 Communications Authority to modify an order potentially
12 because AT&T had a delay?

13 A We've got a couple of things going on here.
14 When you look at the contract language in 4.6.4 that ICA
15 has proposed, it appears to cover the waterfront of AT&T
16 to never charge Communications Authority for any trunk
17 orders or for any service orders associated with trunk
18 orders.

19 When there's a change in a due date because
20 of trunk servicing, which is what that section is
21 about, then it's appropriate that there's a charge to
22 process that order. AT&T incurs costs for that and
23 should be able to recover those costs.

24 Q But in that case you are -- you say CA is the
25 cost causer, but it doesn't seem that CA is causing the

1 cost when it's being required to constantly modify or
2 file order modifications. Would you agree?

3 **A** No. Again, looking at the context of 4.6.4,
4 we're talking about trunk servicing orders and delays of
5 more than two days based on the parties having a
6 conversation. Communications Authority has inserted
7 additional language that appears to go far beyond the
8 context of that section.

9 **Q** Would you agree that not all trunks are local
10 interconnection, that others are still billable?

11 **A** I'm sorry. Others are still billable?

12 **Q** Yeah. That under the language of the -- of
13 that particular portion of the ICA.

14 **A** Well, there are additional trunk groups
15 besides only local interconnection trunk groups. Yes.

16 **Q** Isn't it true that Communications Authority is
17 only saying that local interconnection should not be
18 billable?

19 **A** That's what their language says, yes.

20 **Q** Okay. No further questions on Issue 14.

21 Let's go to Issue 16. The issue is which
22 party's insurance requirements are appropriate for the
23 ICA when Communications Authority is collocating?

24 **A** Okay.

25 **Q** During your deposition, you said, "Given the

1 choice, AT&T would prefer CLECs not be collocated in AT&T
2 central offices." I thought that was an interesting
3 statement. And then you added, you know, "for safety
4 purposes." And then you went on and said -- or described
5 a couple of central office incidents that caused
6 considerable damage and cost. Do you know when they
7 occurred, those that you mentioned?

8 **MR. FRIEDMAN:** I'm going to object to the form
9 of the question. And the objection, Commissioner, is
10 that the question began with something that really was
11 not part of the question at all. It was a reference to
12 something that Ms. Pellerin said in her deposition and
13 then some commentary by counsel about what he thought
14 about it. And this was extraneous to and just by way of
15 preamble to the question that actually had to do with
16 the subject matter. So the objection is to counsel's
17 assertions of positions of his in the guise of
18 introductions to questions.

19 **MR. TWOMEY:** I'm happy to strike that portion
20 and just go straight to the questions.

21 **BY MR. TWOMEY:**

22 **Q** So, Ms. Pellerin, of the central office
23 incidents, you mentioned two. Do you know when they
24 occurred?

25 **A** Quite a while ago.

1 **Q** Isn't it true that the Illinois Bell situation
2 in Hinsdale was in 1987?

3 **A** Sounds about right.

4 **Q** And the New York Telephone incident occurred in
5 1975; is that true?

6 **A** That's probably about right.

7 **Q** So it's fair to say these happened well before
8 there was anything such as a CLEC or the Telecom Act of
9 96, so there were no CLECs collocated in those offices.
10 Isn't that true?

11 **A** And I didn't indicate that I thought they were
12 caused by CLECs either. It was more of a general
13 expression of the potential magnitude of such an event,
14 whether caused by a CLEC or otherwise.

15 **Q** Are you aware of any explosions or substantial
16 damage that has occurred to an ILEC's central office
17 since CLECs were allowed to collocate?

18 **A** Not that I've been aware of. However, the
19 purpose of insurance is to protect against loss in the
20 event something does happen. I mean, I've never
21 experienced a fire at my home, but I still carry pretty
22 extensive fire insurance coverage. Do I think I'm ever
23 going to have a fire? No. But it could happen, and so
24 it's appropriate to have the right amount of insurance.

25 **Q** Sure. Okay. Still, since 1997, no -- nothing

1 has -- are you aware -- let me rephrase the question.
2 Are you aware if AT&T has ever had to seek insurance
3 coverage from a CLEC since 1997?

4 **A** I am anecdotally aware of an event somewhere
5 where there was a wrench that was dropped into equipment
6 that caused damage. It was not a fire; it was other
7 types of damage. But that's only anecdotal.

8 **Q** Do you know if the damage was sufficient to, to
9 cause an insurance claim to be made?

10 **A** I believe that it did, but I don't know the
11 specifics of it.

12 **Q** Okay. Is it your opinion that AT&T's insurance
13 limits are consistent with industry practice typical of
14 other ILECs and what they require for collocators?

15 **A** I don't know what other ILECs do and I don't
16 know what their exposure is. I know we have central
17 offices that have tens of millions of dollars of AT&T
18 equipment, not considering the equipment of other
19 companies that are located in our, in our premises.

20 **Q** Are the insurance limits in the proposed ICA
21 similar to those that have been approved by the
22 Commission in the past 15 years or so?

23 **A** Yes.

24 **Q** So isn't it true that CLECs are only allowed
25 to, to collocate NEBS-certified equipment?

1 **A** No.

2 **Q** In what situations can they provide
3 non-NEBS-certified equipment?

4 **A** This is more Ms. Kemp's area of expertise, but
5 it's my understanding that AT&T has an approved
6 equipment list that includes the equipment that is not
7 NEBS, N-E-B-S, certified. And any CLEC can request that
8 equipment be added to that list for them to be allowed
9 to collocate it.

10 **Q** Okay. I'll follow up with Ms. Kemp on the
11 remainder of the questions for this issue.

12 Let's move to Issue 17, please. Specifically
13 17(i) and (ii) have been resolved, so this is 17(iii).

14 **A** I'm sorry. I'm not aware that 17(ii) has been
15 resolved.

16 **Q** Let's limit it to 17(iii).

17 **A** Okay.

18 **Q** Do you agree that an interconnection agreement
19 is an asset owned by a CLEC?

20 **A** I don't have an opinion about that.

21 **Q** If a company was sold and they had contracts
22 with suppliers, would those contracts be considered an
23 asset of the selling company?

24 **A** I don't have an opinion about that.

25 **Q** If you were selling your house and you were

1 leaving the refrigerator behind, would you consider that
2 refrigerator to be part of the house?

3 **A** Depending on how well it worked.

4 **Q** Fair point. In the case of AT&T's proposed
5 language, wouldn't the effect of the language be to grant
6 AT&T the sole right to deny Communications Authority to
7 freely transfer its asset, its interconnection agreement,
8 or, in our example, it's refrigerator?

9 **A** Would you repeat that question, please?

10 **Q** Sure. Isn't it the case that the language as
11 proposed by AT&T would have the effect of allowing AT&T
12 the sole right to deny Communications Authority to
13 transfer, in the purchase or sale context, to transfer
14 its interconnection agreement to a purchasing entity?

15 **A** No.

16 **Q** Please explain why the answer is no.

17 **A** Well, the language that we're talking about is
18 the last sentence of GT&C Section 7.1.1 that AT&T
19 proposes, which states that CA cannot assign the
20 agreement to an affiliate if that affiliate already has
21 an interconnection agreement of its own. That is a
22 very, very narrow limitation on the assignment of the
23 agreement.

24 **Q** Okay. If Communications Authority was
25 purchased, wouldn't it be possible for the purchasing

1 party to continue to have Communications Authority as an
2 affiliated entity?

3 **A** Could you read that question back to me,
4 please?

5 (Foregoing question read by the court
6 reporter.)

7 This language refers to CA assigning or
8 transferring its agreement to an affiliate of CA if
9 that affiliate of CA already has its own
10 interconnection agreement.

11 The reason for this limitation is so that
12 that affiliate can't shop between contracts and choose
13 the one that it prefers and effectively get out of the
14 contract that it's in based on this assignment of CA's
15 contract to that affiliate. As I said, this is a very,
16 very narrow limitation.

17 **Q** Okay. So it's your position then that if
18 Communications Authority was acquired by another CLEC,
19 that acquiring CLEC had its own ICA, the acquiring CLEC
20 would not be able to adopt Communications Authority's ICA
21 unless AT&T approved; is that correct?

22 **A** I would have to defer to legal in terms of the
23 really specific granular kind of an example you're
24 talking about in terms of what this language would
25 actually entitle them to do.

1 **Q** Okay. Fair enough.

2 In your rebuttal testimony, page 10, line 21,
3 there is the term "unreasonably withhold consent."

4 **A** Yes.

5 **Q** What would be a rationale for withholding
6 consent?

7 **A** I would think it would be reasonable to
8 withhold consent if the CLEC to which CA sought to
9 assign its interconnection agreement was in bankruptcy.

10 **Q** Okay. Can you think of any other situations?

11 **A** I'm sure there's probably others. That's the
12 one that comes to mind now.

13 **Q** Would the fact that the affiliate already had
14 an ICA that was operating be sufficient cause for AT&T to
15 refuse to allow the two to essentially change sides?

16 **A** Well, I'm not sure I followed the last part of
17 that question. But when -- go back to the contract
18 language.

19 At the, at the front of Section 7.1.1 the
20 parties have agreed that CA will not assign the
21 agreement absent AT&T's consent and that AT&T will not
22 unreasonably withhold that consent.

23 Now, at the end of that section,
24 notwithstanding the foregoing, CLEC may not assign or
25 transfer the agreement to an affiliate if that

1 affiliate has an ICA already. So the way I read this
2 language as a layperson is that that last section
3 essentially provides an example where consent has
4 already been withheld, and reasonably so.

5 Q Okay. Can you go to page 11 of your rebuttal
6 testimony, lines, lines 6 through 9? Let's start with
7 the first bit that starts with "i".

8 A Okay.

9 Q It states that, "AT&T Florida is not obligated
10 to recognize an assignment or transfer of the ICA that is
11 not permitted." So it's your position that AT&T should
12 have this power, this right to decide?

13 A That first summary point is associated with
14 Issue 17(ii) that you did not ask me about. That goes
15 to the first piece of disputed language in Section 17,
16 and AT&T has offered compromise language to replace
17 what's there that would say "Any attempted assignment or
18 transfer that is not permitted by this Section,
19 7.1.1, is void as to AT&T-21STATE unless it consents or
20 otherwise chooses to do so."

21 Q So in effect then AT&T still has the right to
22 accept it or not; correct?

23 A Well, CA has agreed to language saying that
24 the CLEC, or CA, cannot assign it unless they have
25 AT&T's approval, and AT&T will not unreasonably withhold

1 that approval. Because that language is already agreed,
2 I don't see that there's a debate about whether AT&T
3 is -- or is not reasonably or unreasonably withholding
4 consent.

5 The language that I just provided as a
6 compromise is intended to deal with a situation where,
7 for example, CA did an assignment without notifying
8 AT&T or without AT&T's reasonable consent, and in that
9 situation AT&T should not be obligated to accept that
10 assignment. So that's a different issue than what we
11 were talking about with assignment to affiliates.

12 Q So starting on line 8, sub ii, "Does not permit
13 assignment to a CA affiliate that already has an ICA with
14 AT&T Florida." So is it your opinion that if CA was
15 acquired by another company, that company had an ICA,
16 that if the two companies tried to merge their
17 operations, that acquiring company could not use CA's
18 interconnection agreement under the terms of this
19 agreement?

20 MR. FRIEDMAN: Objection. Asked and answered
21 twice.

22 COMMISSIONER BRISÉ: Yes. I think it was
23 asked.

24 MR. TWOMEY: Withdrawn.

25 COMMISSIONER BRISÉ: Thank you.

1 **BY MR. TWOMEY:**

2 Q Okay. Ms. Pellerin, could we move to Issue 18,
3 please?

4 A Okay.

5 Q The original draft ICA as sent to
6 Communications Authority, it did have two years plus 90
7 days from the date for execution as the term; is that
8 correct?

9 A Yes.

10 Q When did AT&T make that change to its
11 boilerplate ICA?

12 Let me ask you another question first. Has
13 that always been the case? Has that always been the
14 proposed term in AT&T's standard interconnection
15 agreements?

16 A Not that I'm aware of, no.

17 Q What was the normal or previously used
18 duration?

19 A I don't know.

20 Q Do you know when that changed?

21 A No.

22 Q So under the Telecom Act, CLECs may adopt an
23 interconnection agreement for a, quote, reasonable time.
24 What is AT&T's definition of a reasonable time, i.e.,
25 what duration of initial term must still remain, remain

1 in order for AT&T to allow a CLEC to adopt it?

2 **A** I don't, I don't think it's ever been clearly
3 defined what constitutes a reasonable period of time
4 that a contract would be available for adoption. I
5 think what's reasonable could vary from time to time
6 depending on what's happening in the industry. What
7 might have been reasonable ten years ago might not be
8 reasonable now.

9 **Q** Okay. So can you explain what kind of
10 technical changes you referred to that would require the
11 ICA to be less than five years? What kind of changes in
12 the industry could occur?

13 **A** An example of a change that AT&T has made to
14 its proposed language is the inclusion now of escrow
15 language based on a history of dramatic uncollectibles.
16 That's not a change necessarily in the technology that's
17 being used, although there's an evolution taking place
18 from a TDM network to an IP network over time. Where
19 AT&T is in that process now, I don't have any personal
20 knowledge of that. Those changes are certainly coming.
21 And when you think about the changes that take place in
22 the, in the computer world, things are accelerating
23 faster and faster as to how they, how they change.

24 I use, I use escrow as an example because
25 that's not something that would be considered any kind

1 of a change in law that would allow AT&T to request an
2 amendment to include those types of provisions absent
3 the agreement of the, of the CLEC that was a party to
4 an agreement.

5 Q And there could be changes of law, too; isn't
6 that true.

7 A Of course. Of course. And either party can
8 request an amendment to implement a change of law.

9 Q So the typical way of handling this then is for
10 amendments to be made to the existing underlying
11 interconnection agreement; isn't that true?

12 A That's common.

13 Q So wouldn't it be possible for a base ICA that
14 had a five-year term to simply be amended from time to
15 time as warranted?

16 A For a change in law, yes. But it's clear,
17 given that we're here arbitrating about the issue of
18 escrow, that that's not something that CA, for example,
19 would readily agree to even negotiate an amendment. And
20 there's no requirement that a CLEC negotiate an
21 amendment that is not associated with a change in law.

22 Q Is there any application for AT&T to even
23 listen to a CLEC if it offers an amendment?

24 A I'm sorry?

25 Q If a CLEC brings an amendment to AT&T, must

1 AT&T agree to negotiate it?

2 **A** Not unless it's associated with a change in
3 law.

4 **Q** Okay.

5 **A** I mean, from that perspective it actually
6 could benefit both parties to having a shorter term
7 because you wouldn't be locked in for as long a period
8 of time and would be more open to getting into a
9 different contract.

10 **Q** I'd like to direct your attention to page 12 of
11 your rebuttal testimony, the end of line 20, beginning of
12 line 21.

13 **A** Okay.

14 **Q** Are you aware that during ICA negotiations AT&T
15 negotiated -- or Laura Mock gave specific assurances to
16 Mike Ray that if he accepted a two-year term, AT&T would
17 allow the ICA to continue in effect after the expiration
18 date in evergreen status?

19 **A** It is very common for interconnection
20 agreements to operate beyond the expiration date of the
21 contract in what's called an evergreen status until one
22 party or the other determines that it's appropriate to
23 seek a successor interconnection agreement.

24 What I took exception to was Mr. Ray's
25 assertion that Ms. Mock had promised Communications

1 Authority that there would be some sort of extra ICA
2 agreement to the effect of continuing in an evergreen
3 status, and that is not the case.

4 Q But they were engaged in negotiations at the
5 time; correct?

6 A I well imagine that there were negotiations
7 between Ms. Mock and Mr. Ray at that time.

8 Q So it could have been part of a deal?

9 A No. No. AT&T does not have extra ICA
10 agreements with CLECs. There is no way that Ms. Mock
11 would offer something like that. We simply do not do
12 that.

13 Q But in your testimony you're saying it's at
14 worst a complete fabrication. Do you not believe Mr. Ray
15 that this happened?

16 A Correct.

17 Q Okay. The current interconnection agreements
18 that are rolling over in evergreen status, isn't it true
19 that some of them have been in evergreen status for well
20 over a decade?

21 A I don't know specifically. It wouldn't
22 surprise me.

23 Q And isn't it true these ICAs continue in force
24 and then they're amended on occasion as, as the parties
25 require?

1 **A** Yes.

2 **Q** And isn't it true that they're amended not only
3 for change of law, but for other issues that both parties
4 agree need to be addressed and changed?

5 **A** There are provisions in the ICA that permit or
6 would require amendments in certain circumstances. For
7 example, if there was a name change of one of the
8 parties, the general terms and conditions would require
9 an amendment to accomplish that. There's probably a
10 couple of others.

11 For the most part, amendments, other than for
12 those reasons, are associated with a change in law and
13 not a mutual business decision by the parties.

14 **Q** In your opinion, has there been substantial
15 technical change between, say, 2004 and 2015?

16 **A** I don't really have an opinion on that. I'm
17 not particularly tech savvy --

18 **Q** Okay.

19 **A** -- when it comes to telecommunications.
20 Certainly there's been a lot of evolution from the
21 traditional digital TDM switching towards soft switches.
22 My understanding is that most of our -- most of the
23 CLECs use soft switches that are IP-based or certainly
24 many of them do. That's probably taken place over the
25 last ten years, but I'm not specifically aware of when

1 they started using those types of switches.

2 **Q** Okay. But even with the technical changes,
3 whether they occurred or not, why hasn't AT&T told these
4 companies that have ICAs in evergreen status, why hasn't
5 AT&T sent a notice of termination and demanded a new ICA
6 be negotiated?

7 **A** It's a business decision. Some of that is
8 associated with resources involved in negotiating new
9 agreements.

10 **Q** Is it fair to say that then AT&T believes that
11 the agreements are sort of standing the test of time?

12 **A** That would be one way to describe it.
13 Mr. Hatch made the point in his opening statement about
14 the evolution of our interconnection agreements over
15 time. And as we negotiate with new carriers that may
16 look to arbitrate certain terms and conditions, we move
17 towards what tends to be more beneficial for the CLECs
18 rather than for AT&T. And so to the extent that we're
19 in interconnection agreements that are working for both
20 parties, there really isn't any reason to change them.

21 **Q** And these interconnection agreements that are
22 in evergreen status, isn't it true that a new CLEC cannot
23 adopt them?

24 **A** Certainly for the ones that are much older,
25 yes.

1 **Q** So a new CLEC can't take advantage of the
2 existing arbitrated and amended ICAs that have worked for
3 other CLECs; is that true?

4 **A** There may very well be a contract -- let's say
5 that it's ten years old -- that AT&T has with a CLEC
6 that is working okay. Would AT&T necessarily want to
7 have that again today? Probably not. We are always
8 looking to make improvements in our contracts to make
9 the language more clear. And if we were to enter into
10 an agreement with those same companies today, it
11 probably would look somewhat different from those older
12 agreements that they're operating in now.

13 **Q** Are there any arbitrated interconnection
14 agreements by AT&T Florida that are currently available
15 for adoption by a new CLEC?

16 **A** I am not aware of recent arbitrations of
17 interconnection agreements in Florida, so probably not.
18 The fact that an agreement is not arbitrated, the fact
19 that it's negotiated certainly doesn't mean that the
20 terms and conditions are not reasonable and appropriate.

21 **Q** Have you had much exposure to the negotiation
22 process of interconnection agreements, like how much new
23 CLECs negotiate?

24 **A** I have not personally been involved in
25 negotiating new agreements.

1 **Q** Okay. Okay. That concludes my questions for
2 Issue 18.

3 **COMMISSIONER BRISÉ:** So would this be a good
4 time for us to go ahead and take our lunch break? It is
5 ten minutes till noon, and so we expect to get going
6 again right around 1:00. Okay. So with that, we stand
7 in recess.

8 (Recess.)

9 Okay. We're going to go ahead and reconvene.
10 And, Mr. Twomey, you were in the middle of
11 cross-examination.

12 **MR. TWOMEY:** Thank you, Commissioner.

13 **BY MR. TWOMEY:**

14 **Q** Ms. Pellerin, I'm sorry. I'd like to go back
15 and ask one more question on Issue 18, if you don't mind.

16 So isn't it true that previous
17 interconnection agreements with BellSouth and AT&T with
18 CLECs didn't have similar escrow provisions to those
19 that are proposed in the draft ICA?

20 **A** I'm sorry. That's not Issue 18. 18 is term.

21 **Q** You had testified, you had testified that the
22 existing ICAs that are in evergreen status were changed
23 over time; correct?

24 **A** Yes.

25 **Q** Okay. So --

1 **A** Some were.

2 **Q** So in those, so in those existing ICAs, isn't
3 it true that they didn't contain provisions for escrow or
4 for choke trunks?

5 **A** I don't know about choke trunks. I do know
6 that they do not contain escrow terms.

7 **Q** So that was added to AT&T's boilerplate
8 agreement when? Do you know approximately when?

9 **A** No, I don't know when.

10 **Q** Okay. Okay. Let's move to Issue 19, please.
11 So this involves whether terminations due to a failure to
12 correct a material breach should be prohibited if the
13 dispute resolution process has been revoked but not
14 concluded.

15 **A** I'm sorry. I'm having trouble hearing you.

16 **Q** I do that. Sorry.

17 So the Issue Statement says, "Should
18 termination due to failure to correct a material breach
19 be prohibited if the dispute resolution process has
20 been invoked but not concluded?" Then in your
21 deposition you said that AT&T doesn't go around
22 terminating contracts, quote, willy-nilly, and you said
23 it's rare. And you also said that AT&T would not
24 consider a simple billing issue to be a material
25 breach; is that true?

1 **A** What I recall saying was that if there is a
2 dispute that is in the pipeline, that would not be
3 considered a breach.

4 **Q** So have you read Mr. Ray's testimony regarding
5 the network failure that occurred to Terra Nova Telecom
6 due to AT&T taking action to terminate another CLEC?

7 **A** I recall something about that. As I, as I
8 recall, there was an error. AT&T remedied that error,
9 and there was a settlement agreement between AT&T and
10 Terra Nova.

11 **Q** Isn't it the case that AT&T terminated the
12 network operations of Terra Nova intending to do so for
13 another CLEC? It was just a mistake; correct?

14 **A** I don't know the particulars of the
15 termination. It was not a termination of the ICA. I
16 think it was a termination of a particular
17 interconnection. That was an error.

18 **Q** Okay. But in that case then there was a, there
19 was a termination of network services due to a billing
20 issue; isn't that correct?

21 **A** It was not a termination of the
22 interconnection agreement, which is what the subject of
23 Issue 19 is.

24 **Q** Okay. Wouldn't termination of an
25 interconnection agreement have the effect of also

1 terminating the network's ability to function?

2 **A** I would presume so.

3 **Q** Okay. Nothing further on Issue 19.

4 Issue 20 relates to language preventing
5 Communications Authority from requesting to negotiate a
6 new ICA when there's a disputed outstanding balance.

7 **A** Yes.

8 **Q** And in your deposition you said that AT&T's
9 concern was that CLECs should not be able to get out from
10 a dispute by adopting another ICA and argue that the new
11 ICA's terms applied. Practically is that even possible
12 for a CLEC to make that argument?

13 **A** Sure.

14 **Q** Even given that the, the dispute that arose
15 arose under one ICA, it's your belief that if they
16 adopted a new one, that existing dispute wouldn't still
17 be in play?

18 **A** It might or might not be. For example, let's
19 suppose there's a dispute underway with Communications
20 Authority and Communications Authority has escrow terms
21 in its contract. They should not be entitled to get out
22 from under that contract and negotiate a new contract
23 or, better still for them, to adopt an interconnection
24 agreement that exists that does not have escrow terms.
25 While the dispute is still pending under the current

1 ICA, the dispute needs to work its way through to the
2 end under the terms of the current interconnection
3 agreement before they're entitled to have an agreement
4 with different terms.

5 Q Wouldn't the dispute survive the termination of
6 the initial interconnection agreement?

7 MR. FRIEDMAN: Objection. That calls for a
8 legal conclusion.

9 COMMISSIONER BRISÉ: Mr. Twomey.

10 MR. TWOMEY: I'll withdraw.

11 COMMISSIONER BRISÉ: Okay.

12 BY MR. TWOMEY:

13 Q Have you ever witnessed a CLEC play this kind
14 of trick?

15 A I can't think of any particular example. I've
16 certainly seen a variety of, I'll call it mischief over
17 the years where if there's an opportunity to game the
18 system with contract language that is advantageous to
19 the CLEC, many of them don't hesitate to take advantage
20 of it.

21 Q Couldn't AT&T just evoke dispute resolution
22 under the existing ICA?

23 A Well, presumably dispute resolution is already
24 underway. In the example that you gave me, you
25 indicated there was already a dispute.

1 **Q** Not a formal dispute per se, but there's a
2 disputed outstanding balance, so the CLEC has filed a
3 dispute. It's pending AT&T's resolution. It's not
4 actually in the formal silo of dispute resolution
5 procedure per se. That's my question is couldn't AT&T in
6 that case just go down the formal dispute resolution
7 process on the one hand to deal with that issue, on the
8 other hand allow the CLEC also to negotiate a new ICA?

9 **A** AT&T could do that, but it's not volunteering
10 to for the reasons that I explained. And a very similar
11 issue came up with Express Phone a few years back where
12 Express Phone was looking to get into a different
13 interconnection agreement while they still had billing
14 disputes under their existing agreement, and this
15 Commission did not permit them to do so until their
16 disputes were resolved.

17 **Q** So in effect then, isn't it the case that AT&T
18 could tie Communications Authority's hands and force them
19 to pay a billing dispute simply in order to negotiate a
20 new interconnection agreement?

21 **A** I don't agree with that characterization.
22 AT&T has every incentive to have the disputes resolved
23 and no incentive to keep the CLEC out of a new
24 agreement.

25 **Q** But it does, AT&T does have an incentive to

1 make the CLEC pay the pills that it thinks it's owed;
2 correct?

3 **A** I think it's reasonable in any business
4 arrangement for a company to expect that its bills are
5 paid.

6 **Q** Nothing further on Issue 20.

7 I'm sorry. One more question on Issue 20.
8 What about the situation where AT&T has issued a notice
9 of termination to an interconnection agreement and
10 there's an outstanding billing dispute? How would
11 Communications Authority negotiate a new agreement
12 other than to simply give up and pay what was disputed
13 based on the language that's currently proposed?

14 **A** Until the dispute is resolved, AT&T's language
15 here in Section 8.4.6 would preclude the parties from
16 entering into a new agreement until that dispute was
17 resolved.

18 **Q** You said entering a new agreement. Wouldn't it
19 also prevent even negotiating a new agreement?

20 **A** Sorry. I was looking at the wrong issue.
21 Okay. The language in GT&C Section
22 8.4.6 says that AT&T may reject a request from
23 Communications Authority to initiate negotiations for a
24 new agreement. It does not say anything about AT&T
25 terminating the existing agreement to negotiate a new

1 one.

2 Q Right. And the example I'm giving --
3 occasionally isn't it true that AT&T issues notices of
4 termination to a CLEC and suggests a CLEC, you know,
5 start the negotiation process over?

6 A Occasionally.

7 Q Okay. So in that situation isn't it the case
8 that CA would be stuck because they'd be required to
9 negotiate a new interconnection agreement because of the
10 termination, but they wouldn't be able to under the terms
11 because there's an outstanding billing dispute?

12 A Well, I'd like to make clear something that
13 might, that I might have misrepresented when I answered
14 your question without looking at the contract language.

15 When you look at the contract language in
16 8.4.6, it does not say that the parties could not
17 negotiate a new agreement if AT&T was the one who
18 initiated that negotiation.

19 Q Okay. Now let's move on to Issue 22, please.
20 This is the billing dispute form issue.

21 Have you reviewed Communications Authority's
22 billing dispute form that they send to -- or intend to
23 send to all ILECs?

24 A Yes.

25 Q Does it contain the information necessary to

1 process, make a determination on a billing dispute?

2 **A** It does not contain all the information AT&T
3 requires, no.

4 **Q** Okay. What, what specifically is missing?

5 **A** Two things that I noticed: One, it does not
6 include the USOC, U-S-O-C, and the other is that it does
7 not include the amount of the bill.

8 **Q** I'm sorry. Can you elaborate on amount of the
9 bill?

10 **A** If the bill is \$100 and CA is disputing \$25,
11 both numbers would need to appear, and CA's form only
12 would have the \$25 amount.

13 **Q** Okay. So you're certain it doesn't contain a
14 USOC field?

15 **A** I don't see it on this form, no.

16 **Q** Is it the issue that it's not in a separate
17 field or that it's not potentially shown someplace else,
18 like in the comments field or something like that?

19 **A** Well, comments is a freeform field in
20 anybody's form. But when I look at the list of
21 information that CA would include on its form, I don't
22 see anything that says USOC.

23 **Q** Okay. I can understand it would be difficult
24 to resolve a dispute without the USOC. But if it's
25 AT&T's position that simply putting it in a comment

1 field, perhaps a dispute reason field, is insufficient to
2 give the person reviewing the bill necessary information
3 to resolve the dispute.

4 **A** Well, the problem is that AT&T has a
5 mechanized system that handles the billing disputes.
6 What you're suggesting is that AT&T manually handle
7 every single bill dispute that comes from CA, which is
8 what would be required with CA's form.

9 Mr. Ray admitted that he has not even looked
10 at AT&T's billing guide that's resident on its CLEC
11 online website. If he had, he might be aware that AT&T
12 has a system called ExClaim that's a mechanized system.
13 There's training available. AT&T representatives will
14 handhold with the CLEC representative in terms of how
15 to use it. The CLEC has the ability to use a query
16 function where the CLEC can enter all of the
17 information associated with the dispute, and it will
18 generate automatically a template that would then be
19 popped onto an email and sent to AT&T where it could
20 automatically get posted into AT&T's bill dispute
21 system. The only thing the CLEC would have to add to
22 that template would be the amount that it's actually
23 disputing and the comments that they had to make in a
24 500-character comment field.

25 The other thing that ExClaim offers them is

1 the ability to query after a dispute has already been
2 filed so that they can see, without having to actually
3 talk to AT&T, at any point in time where their dispute
4 is in the pipeline. That is by far the most efficient
5 and most preferred way and the most expeditious way to
6 get disputes resolved is to get them mechanically into
7 the system as quickly as possible.

8 Q So it's a matter of convenience and expedience
9 in your opinion?

10 A Which benefits both parties. And with the
11 ExClaim system that generates the template
12 automatically, it makes it very simple.

13 Q Let me ask what the relevance and necessity of
14 a field that has the total amount of the bill versus just
15 having what is actually being disputed? Why does it
16 matter if it's \$100 total and a \$25 dispute?

17 A Admittedly I do not process bill disputes, so
18 I don't have specific knowledge regarding the
19 requirement for each of the fields that AT&T says it
20 requires. It doesn't seem like it would be a hard
21 number to produce.

22 Q So in the emails that's marked as Ray Exhibit
23 No. 2 on the bottom right corner -- I think it's marked
24 as something else for purposes of the hearing -- hearing
25 Exhibit -- Bates stamp starting 01637. Do you have that

1 in front of you by chance?

2 **A** No.

3 **MR. TWOMEY:** Could we make that available to
4 the witness?

5 **COMMISSIONER BRISÉ:** Sure. Staff, if you
6 could help us with the exhibit Bates stamped 01637.

7 **MS. TAN:** Yes. We can hand the witness a
8 computer with the Comprehensive Exhibit List that is
9 loaded onto it, if that's okay.

10 **COMMISSIONER BRISÉ:** That's fine with me.

11 **MR. TWOMEY:** Can we just hand her a copy?

12 **COMMISSIONER BRISÉ:** It's the set that you
13 passed out earlier today.

14 **MS. TAN:** Oh, then we can refer to what was
15 already passed out.

16 **COMMISSIONER BRISÉ:** Yeah. It's the set of
17 emails. And since it was an exhibit that was part of a,
18 one of the exhibits that was already part of the record,
19 we didn't mark it as a separate exhibit. Thank you.

20 **MS. HELTON:** I think it's part of Exhibit No.
21 46.

22 **COMMISSIONER BRISÉ:** 46. Thank you.

23 **BY MR. TWOMEY:**

24 **Q** Okay. Could you go to the third page of this
25 exhibit Bates stamped page 01639.

1 **A** Okay.

2 **Q** I'm sorry. Go back one more page first, 01638.
3 In the comments field there do you see the letters PE1W1?

4 **A** Yes, I see that.

5 **Q** Is, is that most likely a USOC?

6 **A** Probably.

7 **Q** If you go to the next page, 01639, do you see
8 the field where it says "TN/CktID," I presume, where it
9 says "All PE1W1"?

10 **A** Yes.

11 **Q** Is that likely to be a USOC as well?

12 **A** Well, it's more than a USOC because it also
13 has the word "all."

14 **Q** Okay. Okay. No further questions on Issue 22.
15 And this is regarding escrow. I believe in
16 several parts in the testimony it was admitted that
17 AT&T's invoices to CLECs are not 100 percent accurate;
18 is that true?

19 **A** Yes.

20 **Q** Is there any statutory or regulatory provision
21 requiring CLECs to pay an ILEC disputed balances in an
22 escrow agreement?

23 **A** I'm not aware of any law one way or the other.

24 **Q** Is there any law or regulation guaranteeing
25 AT&T protection from the risk of nonpayment by its

1 wholesale CLEC customers?

2 **A** The only thing that I'm generally aware of
3 would be an obligation to pay your bills.

4 **Q** Okay. In your deposition you referred to AT&T
5 being left with uncollectibles and no hope for recovery.
6 Isn't it true that a CLEC is typically required to have
7 security deposits equal to two months of their
8 anticipated billings?

9 **A** That's common, and that's usually
10 significantly less than what we're left with in terms of
11 uncollectibles.

12 **Q** How can you -- what's your basis for saying
13 it's significantly less?

14 **A** Because --

15 **Q** In all situations, or how does it work?

16 **A** Well, the deposit language is intended to
17 provide a certain amount of security for nonpayment.
18 Let me just grab that language first.

19 Okay. In Section 10 of the general terms and
20 conditions there's provisions regarding assurance of
21 payment, and it's based on two months average billing
22 until such time as the CLEC has proven its
23 creditworthiness over time, in which case the deposit
24 can be returned if there's actually a cash deposit.
25 That's described in Section 10.12 in terms of return of

1 the deposit.

2 The escrow provisions are in Section
3 11.10 and other portions of Section 11 regarding
4 billing and payment of charges.

5 Q Okay. In terms of that average, does AT&T ever
6 relook at CLEC bills to see what the average is and then
7 raise the deposit requested?

8 A That does happen on occasion, yes.

9 Q In the deposition you said escrow is waived if
10 pay history is acceptable for 12 months and the amount
11 due is less than 10 percent of the monthly bill. So I'm
12 wondering if those are independent variables, and I'll
13 explain.

14 So in order to have escrow waived, must a
15 CLEC have an acceptable pay history for 12 months and
16 the amount due is less than 10 percent of the monthly
17 bill?

18 A That's one of the options, yes.

19 Q Okay. So both must be met?

20 A For that, for that particular exception, yes.

21 Q Okay. What if the CLEC has some disputes
22 pending that are, say, repeated every month, they're the
23 same kind of billing issue, the CLEC is then disputing
24 them, would that -- could that be carved out in terms of
25 the overall amount in dispute, or would that be, or would

1 the previous exception be the only way out? So, for
2 example, in the 12-month period and there's -- after six
3 months a CLEC files disputes on the same thing over and
4 over again, they get approved in the seventh month, but
5 then the misbilling occurs and carries on. Would AT&T
6 back those out of the total amount in dispute, or would
7 that still then limit the CLEC's ability to have escrow
8 waived?

9 **A** You lost me in the question.

10 **Q** Okay. Sorry. I'll try again. Let's say there
11 are -- let's narrow the time period. Let's say in month
12 nine and ten there are two major billing issues that
13 were, you know, \$15,000, \$18,000 apiece.

14 **A** What happened in months one through eight?

15 **Q** Everything was fine.

16 **A** Okay. Every bill was paid on time and no
17 dispute?

18 **Q** Yeah. Or the disputes were, were --

19 **A** Resolved.

20 **Q** -- resolved one way or the other.

21 **A** Okay.

22 **Q** And there's big disputes. Credits are made by
23 AT&T for the two big disputes that occurred in month nine
24 and ten. Sometimes disputes carry on and the billing
25 occurs, reoccurs, say, month 11 and 12. Is it AT&T's --

1 is AT&T's -- are they capable of looking at this on an
2 individual case basis and saying, okay, well, we already
3 credited months nine and ten for those big disputes and
4 you have disputes in 11 and 12 pending, so we're going to
5 take those out of the amount that's due less than
6 10 percent of the monthly bill or pay history is okay
7 consideration, or is it a hard and fast, if you owe more
8 than 10 -- if your disputed balance is more than
9 10 percent of the monthly bill, no luck, escrow is not
10 being waived?

11 **A** If the disputed amount is more than 10 percent
12 of the bill or it's more than \$15,000, unless it's
13 subject to the third exclusion, which is if there's an
14 obvious error, then escrow would not be waived. But if
15 there's an obvious error, which is addressed in Section
16 11.9.1.3, then you bring it to our attention, we say,
17 oh, yeah, that's right, we resolved that in months nine
18 and ten and so we'll, we'll get that straightened out.
19 And there would not be an escrow requirement in that
20 situation.

21 **Q** So that's fully in AT&T's discretion to decide
22 whether or not it's an obvious billing error?

23 **A** Well, there would be a conversation obviously
24 if it was the exact same issue that we had just provided
25 you credit and there was an error in the billing system

1 that had not been corrected yet --

2 Q Okay.

3 A -- then I think it's reasonable.

4 Q So, again, one more time. Sorry. In your
5 deposition, so then you said escrow was designed to
6 prevent, and I think you've said here today, CLEC
7 mischief, which I like, and to prevent frivolous
8 disputes. So AT&T decides what's a frivolous dispute; is
9 that correct?

10 A No.

11 Q Who would decide?

12 A That was a term of art, not a specific
13 contract term. If there's a CLEC that just repeatedly
14 disputes every little thing with no justification and
15 it's always resolved in AT&T's favor because the CLEC
16 was wrong and they were just looking to delay having to
17 pay their bills, that would be what I would consider to
18 be frivolous.

19 Q Okay.

20 A And not based in substance.

21 Q Okay. Okay. So in your deposition you argued
22 that establishing escrow is just a cost of doing business
23 for CLECs. If they want to play, they have to set up the
24 escrow.

25 Is there any statutory or regulatory

1 authority requiring a CLEC to bear escrow costs for
2 billing mistakes that potentially were caused by AT&T?

3 **A** I'm not aware of any particular law regarding
4 escrow one way or the other.

5 **Q** Is AT&T the only ILEC that requires escrow?

6 **A** I don't know what other ILECs do.

7 **Q** So you're not aware that this -- you're not
8 aware that this is an industry standard process?

9 **A** It's standard within AT&T at this time because
10 of the hundreds of millions of dollars of uncollectibles
11 we've had in recent years.

12 **Q** Is it safe to assume that other ILECs have had
13 similar billing problems?

14 **A** I don't know what other ILECs have had in
15 terms of problems. They offer different services than
16 we do.

17 **Q** Do you have any knowledge as to how many CLECs
18 in Florida currently have billing disputes in excess of
19 \$15,000?

20 **A** No, I don't.

21 **Q** So we talked about sort of establishing an
22 escrow account, setting up the cost with the bank. To
23 fund an escrow account, it's going to -- I wonder if --
24 would AT&T be opposed to language that would require AT&T
25 to cover the cost of raising the capital to get escrow

1 money into the account if it was a -- if it was found to
2 be an AT&T billing error?

3 **A** Yes.

4 **MS. HELTON:** Mr. Chairman, I'm having a really
5 hard time hearing Mr. Twomey. And I just had my hearing
6 checked and the doctor said that I have good hearing,
7 and so I think maybe if he could speak up or speak into
8 the microphone a little bit better.

9 **COMMISSIONER BRISÉ:** Okay.

10 **MR. TWOMEY:** Sorry.

11 **COMMISSIONER BRISÉ:** Okay. I'll do my best.

12 **BY MR. TWOMEY:**

13 **Q** Okay. Ms. Pellerin, your testimony referenced
14 Astro Tel's bankruptcy. Isn't it true that AT&T did not
15 suffer any monetary loss resulting from the bankruptcy of
16 Astro Tel?

17 **A** That's not my understanding, no.

18 **Q** Okay. Can you explain what your understanding
19 is?

20 **A** I asked our collections folks how much we
21 ended up with as uncollectibles, and he gave me a number
22 that was in five figures.

23 **Q** Okay. But isn't it the case that AT&T actually
24 refunded Astro Tel's security deposit?

25 **A** That I don't know about.

1 **Q** How would it be possible that Astro Tel owed
2 AT&T money but AT&T still refunded the security deposit?

3 **MR. FRIEDMAN:** Objection. That's
4 argumentative.

5 **MR. TWOMEY:** Withdrawn.

6 **BY MR. TWOMEY:**

7 **Q** Let's move to Issue 24, please. What
8 percentage would you say of CLEC billing disputes are
9 resolved in favor of the CLEC?

10 **A** I don't know.

11 **Q** Is it AT&T's position that AT&T would be
12 entitled to disconnect Communications Authority's
13 customers while there was a pending billing dispute?

14 **A** Is there something in my testimony you could
15 point me to where I talk about that?

16 **Q** Just a moment, please.

17 So the issue itself says, "Should the ICA
18 provide that the billing party may only send a
19 discontinuance notice for unpaid undisputed charges?"
20 If you go to your rebuttal testimony, there's some
21 discussion of this on page 19, and it goes on from
22 there.

23 **A** My understanding of the language that we're
24 talking about here in GT&C Section 12.2 is that AT&T
25 would not be sending a discontinuance notice for an

1 amount that was disputed provided that CA had either
2 paid AT&T that amount while the dispute was pending or
3 had paid it into the escrow account. If they've done
4 either of those things, then it's not unpaid and AT&T
5 would not disconnect while that dispute was pending.

6 **Q** Isn't it the case that AT&T is solely in
7 control of how quickly it responds to a CLEC billing
8 dispute?

9 **A** A function of how quickly AT&T responds is
10 also a function of how quickly it can process that
11 dispute coming in. And if it comes in manually through
12 an email and AT&T has to take the time to research to
13 figure out what's actually in dispute before getting it
14 into its system, that will take longer.

15 **Q** Okay. There's also a dispute as to how many
16 days it should -- a CLEC should or, in this case,
17 Communications Authority should have to pay. Why isn't
18 it reasonable for Communications Authority to have 30
19 days, given its size and lack of financial resources, to
20 come up with the money to pay? Why is 15 days more
21 reasonable in AT&T's opinion?

22 **A** Well, I don't think that CA's size or its
23 ability to raise the payment is relevant. CA would have
24 already had at least 31 days from the date of the bill,
25 and an additional 15 days is 46 days to pay the amount

1 that it owes.

2 Q So if suddenly AT&T determined on its own that
3 there's a bill of some \$20,000 due and owing, AT&T
4 expects CA to have that money on hand and send it in
5 within 15 days?

6 A Well, AT&T doesn't simply determine on its own
7 what's owed. The contract has various terms and
8 conditions and prices. And to the extent CA has availed
9 itself of those service, then the prices are what the
10 prices are. There shouldn't be any surprise on those
11 prices, and they appear on the bill.

12 So for CA to say it needs 60 days from the
13 date of the bill in order to pay without being
14 discontinued simply because it's small or it has
15 financial challenges I don't think is reasonable.

16 Q Okay. That's fine. Thanks.

17 Let's move to Issue 25, please. So if AT&T
18 provides a lump sum credit for a CLEC billing dispute,
19 how is a CLEC supposed to determine which credits were
20 applied to which billing account number towards the
21 resolution of which USOC dispute? How are they
22 supposed to audit their bills?

23 A Well, when you're talking about, for example,
24 a settlement of billing disputes, the parties would have
25 been engaging in a dialogue during those settlement

1 discussions regarding what was actually being resolved.
2 So at the end of that settlement process there should
3 be -- in the example that I provided -- credits that
4 were applied by AT&T to those bills and payments by
5 Communications Authority, again also associated with
6 those bills. CA should know as well as AT&T what's
7 happening there.

8 Now, I can tell you that in AT&T's response
9 to staff discovery, interrogatory No. 112, AT&T did
10 offer a compromise in terms of accepting Communications
11 Authority's language, provided that there was a simple
12 qualifying term, a phrase that said when the billing
13 system permits. As long as AT&T's billing system is
14 capable of handling the details with the, the level of
15 detail that Communications Authority is asking for in
16 its language, AT&T will certainly do that. If its
17 billing system can't do it, its billing system can't do
18 it.

19 Q Okay. So I understand your point about if
20 there's a settled amount like, like you have in your
21 testimony, your rebuttal testimony on pages 27 and 28.
22 That's what I guess we in the industry call black box
23 kind of settlement where it's a lump sum. Say we agree,
24 nothing else is owed.

25 My question though is more on if there are,

1 you know, 72 line items that are disputed, each with a
2 different amount due, the next month there's a dispute
3 filed and then AT&T resolves it and just gives one
4 number, how would CA know which of those 72 disputes
5 were approved?

6 **A** To the extent that AT&T's billing system can
7 provide that specific detail, we will do that. It
8 certainly benefits both parties to have things clear.

9 **Q** But if the system can't do that, it just --

10 **A** If it can't do it, it can't do it. And that's
11 all that we're looking to have the contract language say
12 is if we can't do it, you know, all the contract
13 world -- language in the world isn't going to magically
14 make it happen. To the extent we can do it, we will.

15 **Q** Okay. Let's go to Issue 27, please. This
16 regards sort of bulk disputes. In your deposition, you
17 said that AT&T simply cannot process bulk disputes.
18 Mr. Ray has testified other ILECs can and do. Why can't
19 AT&T process bulk disputes?

20 **A** I don't recall saying that we could not ever
21 do that.

22 **Q** Okay. Can you explain in what situations AT&T
23 is capable of processing bulk disputes?

24 **A** Because I'm not involved in the mechanics of
25 that process, I'm not sure I can provide a particular

1 example. I would think that if it was all for the exact
2 same USOC on the same billing account number for the
3 same period of time, we may be able to handle those as a
4 single dispute. But that would be a conversation
5 between Communications Authority and AT&T, their billing
6 person. I'm told that we have done that.

7 **Q** But currently in the ICA there's no proposed
8 language by AT&T that allows for Communications Authority
9 to issue bulk disputes; isn't that the case?

10 **A** I think the ICA is silent about that. The
11 problem with Communications Authority's language is that
12 it is very broad.

13 **Q** So again then --

14 **MR. FRIEDMAN:** Let her finish her response,
15 please.

16 **MR. TWOMEY:** Uh-huh.

17 **THE WITNESS:** What Communications Authority's
18 language says is that CA could dispute a class of
19 related charges in a single dispute notice as long as
20 the dispute information provided relates to all disputes
21 in the class as a whole.

22 One of the problems with that language is
23 that's subject to varying interpretations.
24 Communications Authority might consider loops as a class
25 as a whole, and yet there's very different terms and

1 rates associated with different types of loops that
2 could not be handled on a single dispute.

3 There isn't any language in AT&T's contract
4 that precludes the parties' agreement to handle a
5 dispute in a bulk basis when it makes sense to do so.

6 **BY MR. TWOMEY:**

7 **Q** Okay. But then again that would be at AT&T's
8 discretion to accept those disputes in a class?

9 **A** Certainly. AT&T is the one who has to process
10 those disputes.

11 **Q** When -- and tell me if this is outside of your
12 area. That's fine. But when AT&T resolves a CLEC
13 billing dispute in the CLEC's favor, isn't it true that
14 AT&T does not always make changes to its billing system
15 to prevent the same billing errors from appearing on
16 subsequent invoices?

17 **A** It would depend on the nature of what you
18 refer to as an error in the billing system in terms of a
19 mistake in the bill. It's not necessarily a fundamental
20 error in the billing system that caused the resolution
21 of the dispute in CA's favor, and so there wouldn't be
22 any massive change to the billing system if the billing
23 system wasn't the cause of the error.

24 **Q** Are you aware that other ILECs accept bulk
25 disputes?

1 **A** No.

2 **Q** Are you aware that AT&T and its affiliates
3 dispute classes of charges on CLEC bills?

4 **A** I don't know about that.

5 **Q** Is there any legal or regulatory basis
6 supporting AT&T's prohibition of a CLEC disputing a class
7 of related charges on a single dispute notice?

8 **MR. FRIEDMAN:** Objection. That
9 mischaracterizes the issue. There is no prohibition, as
10 the witness has made clear.

11 **COMMISSIONER BRISÉ:** Restate your question, if
12 you'd like.

13 **MR. TWOMEY:** No, I'll withdraw it. I've got
14 my answer.

15 **BY MR. TWOMEY:**

16 **Q** Okay. Let's move to Issue 29, please. Isn't
17 it true that as a result of negotiations or a decision by
18 the Commission the parties can agree to any sort of
19 dispute resolution provisions applicable to the ICA?

20 **A** Well, the parties have already agreed to a
21 great deal of the terms and conditions for the dispute
22 resolution process. There's actually only a few areas
23 of disagreement being arbitrated.

24 **Q** I'd like to ask you just a couple of questions
25 about your response in the rebuttal testimony starting on

1 page 31, starting with lines -- on line 23.

2 You said AT&T asks requesting CLECs to sign
3 an NDA, a nondisclosure agreement, to cover the
4 parties' discussions during negotiations. Has that
5 always been AT&T's position?

6 **A** For as long as I'm aware of.

7 **Q** So in the time period between, say, 1997 and
8 2005, that was then SBC's position -- or AT&T's position,
9 rather, AT&T predecessors?

10 **A** I was not with SBC until the end of 1998.
11 When I was with SNET before the SBC acquisition, even
12 then we still required nondisclosure agreements for
13 negotiations. I'm not aware of any time when we did
14 not.

15 **Q** Okay. Thanks for the clarification.
16 Regarding -- moving on to Issue 32. Are there any
17 statutory or regulatory provisions supporting AT&T's
18 position that it is not required to separately itemize
19 taxes on a wholesale customer's bill?

20 **A** I'm not aware of any legal or regulatory
21 requirement, requirement or not on that issue.

22 **Q** Okay. Are there any similar statutes or
23 regulations that require AT&T to itemize taxes and
24 regulatory surcharges on bills sent to retail customers?

25 **A** I'm not aware of retail billing requirements.

1 Q Okay. Let's move on then please to Issue 35.
2 No, let's skip that. We don't need that. We can skip
3 Issue 36 as well.

4 You have argued that 911 is not part of local
5 interconnection. Has this always been AT&T's position?

6 A In recent memory. Always is a long time.

7 Q Fair enough. So it's possible that it was
8 different at some point?

9 A Well, at least since the Intrado (phonetic)
10 arbitration, which I think was around 2008. I'm not
11 familiar with Florida contracts before then.

12 Q Are you familiar with any other recent
13 regulatory decisions that found that E911 is part of
14 local interconnection and TELRIC should apply?

15 A I've seen it handled different ways in
16 different jurisdictions.

17 Q Okay. Let's move to Issue 43, please. So this
18 is regarding late payment charges on top of interest
19 charges. So are there any legal or regulatory
20 requirements supporting AT&T's position that it is
21 entitled to collect both late payment charges and
22 interest on the same past due amounts?

23 **MR. FRIEDMAN:** I'm going to object. I haven't
24 previously objected to this form. The objection is that
25 it calls for legal opinion. If counsel would rephrase

1 just to ask are you aware of any rather are there any,
2 that would help.

3 **MR. TWOMEY:** Okay. Agreed.

4 **BY MR. TWOMEY:**

5 **Q** Are you aware of any legal or regulatory
6 requirements supporting AT&T's position that it's
7 entitled to collect both late payment charges and
8 interest upon the same past due amounts?

9 **A** I seem to recall that there was something in
10 Florida that permitted it, and that was provided to me
11 by counsel. On my direct testimony I reference a
12 Florida court of appeals decision that permitted both
13 interest and late payment charges. And that's the
14 extent of my knowledge of the law on that.

15 **Q** Okay. Nothing further on that issue.

16 For Issue 50, is it AT&T's position that the
17 language in the ICA regarding vacant reported numbers
18 is consistent with FCC orders?

19 **A** Yes.

20 **Q** Okay. Let's move to Issue 60, please.

21 So in your rebuttal testimony, page 40, lines
22 11 to 14, you note Section 251(c)(4) and FCC
23 implementing rules on resell. I think we can both
24 agree that a CLEC can't resell services to itself; is
25 that correct?

1 **A** Yes.

2 **Q** Okay. But the issue is whether Communications
3 Authority could resell services to an affiliate. Is it
4 AT&T's position that that same FCC, the same Telecom Act
5 section prohibits such an activity?

6 **A** The restriction on a CLEC reselling AT&T's
7 services to an affiliate is a reasonable restriction on
8 resell, and so 251(c)(4) and the FCC's implementing
9 rules provide for reasonable restrictions on resell.

10 The purpose of resell is to facilitate
11 competition for providing local exchange services to
12 end users, and that would not include an affiliate of a
13 CLEC.

14 **Q** So for a reasonable restriction, would that be
15 a case-by-case basis or is it absolutely restricted under
16 AT&T's language?

17 **A** Under AT&T's language it would not, CA would
18 not be permitted to resell AT&T's retail services to an
19 affiliate.

20 **Q** Okay. So let me give you an example. Let's
21 say Communications Authority set up an Internet service
22 provider, an affiliated entity sharing common ownership,
23 and that ISP, would it be able to order services from --
24 any services under this language from Communications
25 Authority?

1 **A** Sure, just not at the wholesale discount.

2 **Q** Would the ISP be able to, say, order a regular
3 POTS line to use as a fax number or a customer service
4 number so that in the event of a power outage customers
5 could still call?

6 **MR. FRIEDMAN:** Could counsel clarify whether
7 he's asking whether the affiliate could buy such a line
8 from CA or from AT&T Florida?

9 **MR. TWOMEY:** From CA.

10 **THE WITNESS:** What that affiliate could buy
11 from CA would be wholly dependent on the services that
12 CA offers.

13 **BY MR. TWOMEY:**

14 **Q** But in that case -- sorry.

15 **A** AT&T does not believe that it would be
16 appropriate for CA to obtain a line at the wholesale
17 discount and then resell that line to its affiliate.

18 **Q** Okay. We can move on from there. Issue 61 is
19 in regards to detailed billing. Are there any federal
20 regulations that apply to AT&T's billing of -- to its, to
21 its wholesale CLEC customers?

22 **A** I don't know.

23 **Q** Are you aware of any regulatory provisions that
24 apply to AT&T billing to retail customers?

25 **A** I'm aware that there are regulations that CA

1 is relying on in its language that I believe are
2 associated with retail billing. I would assume those
3 would apply equally to all retail providers.

4 Q But it's AT&T's position that those do not
5 apply to wholesale billing. Is that correct, or am I
6 miss --

7 A That's correct. Those are very specifically
8 retail focused.

9 Q Are you aware of any state regulations
10 regarding ILEC billing provided to CLEC customers?

11 A No.

12 MR. TWOMEY: Okay. Thank you for your
13 patience. No more -- further questions.

14 COMMISSIONER BRISÉ: Thank you very much.
15 Staff?

16 **EXAMINATION**

17 **BY MS. TAN:**

18 Q Hello, Ms. Pellerin.

19 A Hello.

20 Q I'd like to start a discussion today about
21 Issue 13. And Issue 13 revolves around the definition of
22 past due regarding charges that are not paid on time.

23 If the definition of past due is limited to
24 undisputed charges only, should Sections 11.9 and/or
25 12.2 of the terms and conditions further clarify that

1 the application of past due charges is only for the
2 undisputed charges?

3 **A** Well, in Section 12.2, Communications
4 Authority has proposed in the middle of that section
5 that the word "undisputed" be included. If I understand
6 your question correctly, that would be a revision to
7 12.2 in the event that unpaid is only associated with
8 undisputed.

9 The other section, 11.9, the agreed language
10 is already referring specifically to disputed amounts
11 in terms of the notice. I think -- I'm looking at my
12 direct testimony on this issue, 13C, which talks about
13 the definition of unpaid charges. I'm sorry. Is that
14 the one you're asking or --

15 **Q** That is correct.

16 **A** Okay. There's language that the parties have
17 already agreed to regarding unpaid charges and how that
18 term is actually used in 11.9 and 12.4. So defining
19 unpaid charges to be only undisputed charges makes that
20 language that the parties have agreed to not work
21 properly.

22 **Q** So what does AT&T Florida believe is an
23 undisputed charge in terms of this interconnection
24 agreement?

25 **A** An undisputed charge is an amount that AT&T

1 has billed that -- or, vice versa, that CA has billed on
2 the terms of reciprocal compensation, but that has been
3 billed and the billed party doesn't claim a dispute that
4 the bill is wrong. That would be an undisputed charge.

5 Q Okay. And if an amount is placed into escrow,
6 would that be considered a disputed charge or an
7 undisputed charge?

8 A That would be disputed. It would be unpaid,
9 but disputed.

10 Q Thank you for the clarification.

11 I'd like to look at Issue 15ii. And are
12 there security measures in place that limit access to
13 AT&T's central office facilities?

14 A Yes.

15 Q And could you please explain?

16 A To a limited degree. Ms. Kemp may be able to
17 provide additional -- my understanding is that CLECs
18 have identification cards that may allow particular
19 individuals access to the premise, as well as the
20 vendors would also have security cards that allowed them
21 access. They would have already been cleared in advance
22 that it was, quote, unquote, safe for them to be on
23 prem.

24 Q Thank you. And in Issue 17ii I'd like to look
25 at the general terms and conditions of Section 1.1.1

1 (sic) of the proposed interconnection agreement. And
2 when you get to that point, go ahead and let me know when
3 you're there.

4 **A** I don't have that section. I'm sorry.

5 **Q** Pardon?

6 **A** Did you mean 7.1.1?

7 **Q** 7.1.1.

8 **A** Okay. That I do have.

9 Okay. Go ahead.

10 **Q** Okay. And could you please read that first
11 line of 7.1.1?

12 **A** "CLEC may not assign, delegate, or otherwise
13 transfer its rights or obligations under this agreement
14 voluntarily or involuntarily, directly or indirectly,
15 whether by merger, consolidation, dissolution, operation
16 of law, change in control, or any other manner without
17 the prior written consent of AT&T-21STATE which shall
18 not be unreasonably withheld."

19 **Q** And would you say that the term "or any other
20 manner" would preclude the assignment to any affiliate?

21 **A** I don't know what other -- any other matter
22 (sic) would be.

23 **Q** Any other manner?

24 **A** Any other manner, yes.

25 **Q** All right. But if this term would not apply to

1 transfers to affiliates, would there be any other
2 circumstances where "or any other manner" would apply?

3 **A** I can't think of any. I mean, merger,
4 consolidation, dissolution, operation of law, or change
5 in control is pretty comprehensive.

6 **Q** Okay. Thank you very much.

7 I'd like to look at Issue 19. And do you
8 believe that material breach should be defined as any
9 breach of the interconnection agreement that would
10 relate to the safety of equipment or -- and/or
11 personnel?

12 **A** I think that's a reasonable example of what
13 would be a material breach. There's probably others, so
14 I wouldn't necessarily want to limit it to that.

15 **Q** But if the material breach was considered a
16 safety-related issue, would it also include issues
17 related to levels of insurance and authorized equipment
18 in a collocation space or something else?

19 **A** It could.

20 **Q** And do you believe that material breach should
21 be defined in a way that there's no question if one has
22 occurred?

23 **A** Not necessarily, because we're talking about a
24 contract that's hundreds of pages as, as an entire
25 entity. I think it would be entirely possible to miss

1 something important in looking to actually define what's
2 meant by material.

3 Now, Mr. Ray said that he thought that
4 material didn't mean anything and that any breach is a
5 breach. And certainly a breach is a breach, but when
6 we're talking about terminating an interconnection
7 agreement, it really does need to be something
8 substantial before AT&T would consider terminating that
9 contract.

10 Q Thank you. And do you believe that the dispute
11 resolution process can be invoked to resolve a material
12 breach?

13 A If there's a dispute about a material breach,
14 then certainly CA would have the ability to go to
15 whatever regular body -- regulatory body it believed
16 could provide assistance in order to prevent the
17 termination of its contract.

18 Q Okay. Thank you. I'd like to go back a moment
19 to Issue 18. And you stated earlier in your
20 cross-examination that, something to the effect that the
21 period an agreement is available for adoption hasn't
22 really been officially determined; is that correct?

23 A Yes. And when you look at the contract itself
24 and the language that's in place, both the language
25 that's agreed and the language that's in dispute, there

1 really is no issue about what's a reasonable period of
2 time that an ICA is available for adoption because we're
3 not in a situation here where Communications Authority
4 is looking to adopt an agreement. And so the question
5 of what's reasonable would really come up on a
6 case-by-case basis when a CLEC requested to adopt an
7 existing agreement. And, for example, if AT&T rejected
8 that request because it did not consider it to be
9 reasonably still available, then it could be brought to
10 the Commission to actually make a determination in that
11 particular case what would be a reasonable period of
12 time for that contract at that time.

13 **Q** So to your knowledge, the FCC has stated that
14 agreements should remain available for adoption for a
15 reasonable period of time but has not defined what that
16 time period would be limited to.

17 **A** That's correct.

18 **Q** Okay. And then also to your knowledge, the
19 Florida Public Service Commission has not made a
20 determination as to what constitutes a reasonable amount
21 of time also; is that correct?

22 **A** That's correct.

23 **Q** Okay. So the -- your discussion earlier about
24 accepting or denying a request by a CLEC to adopt an
25 agreement refers to AT&T's position on what constitutes a

1 reasonable period of time and not a decision or order
2 from the FCC or the Florida Public Service Commission; is
3 that correct?

4 **A** Yes. And that would be on a case-by-case
5 basis when there was a request to adopt an agreement.

6 **Q** Okay. Thank you. I'd like to move now to
7 Issue 20, and I'd like to talk to you about escrow
8 accounts. And in this interconnection agreement, AT&T
9 Florida is in favor of establishing an escrow account for
10 amounts in dispute above \$15,000; is that correct?

11 **A** Yes.

12 **Q** Okay. And if a disputing party has established
13 an escrow account and has deposited the disputed amounts
14 in that account pending resolution of the dispute or
15 disputes, is the disputing party in good standing?

16 **A** Yes.

17 **Q** And does AT&T Florida believe that it can
18 reject a request to negotiate a new interconnection
19 agreement if Communications Authority has a disputed
20 outstanding balance?

21 **A** Yes.

22 **Q** Can you explain why?

23 **A** Until the dispute is resolved, it's hanging
24 out there open. And if CA were permitted to enter into
25 a different agreement, for example, that did not have an

1 escrow provision because it adopted another carrier's
2 agreement that didn't have one, they could then
3 conceivably use that new agreement to say we don't have
4 to have escrow anymore and cancel that account and put
5 the money back in their pocket and then not pay pursuant
6 to the new agreement, and AT&T is left with the
7 uncollectibles that it's looking to avoid.

8 **Q** And is it rare for a CLEC such as
9 Communications Authority to have amounts in dispute?

10 **A** I don't know how common it is.

11 **Q** Okay. And do you believe that a new agreement
12 can include language that requires a CLEC such as
13 Communications Authority to resolve existing disputes
14 under the terms of the previous agreement and limiting
15 new disputes to the new agreement?

16 **A** Would you repeat that, please?

17 **Q** Sure. Do you believe that a new agreement can
18 include language that requires a CLEC such as
19 Communications Authority to resolve existing disputes
20 under the terms of the previous agreement and limiting
21 new disputes to the new agreement?

22 **A** It could, but it might not. And if we had
23 agreements that were available for adoption that did not
24 include those terms, then we wouldn't have them in the
25 new agreement.

1 **Q** AT&T's concern is regarding undeliverables
2 (sic); is that correct?

3 **A** Uncollectibles.

4 **Q** Uncollectibles. Thank you.

5 I'd like to look at Issue 22a, and I'd like
6 to talk to you about AT&T Florida's dispute form. And
7 does AT&T Florida have a dispute form that CLECs are to
8 use to detail billing disputes?

9 **A** Yes.

10 **Q** And does the form that AT&T Florida uses lock
11 the character field in the form to 500 characters?

12 **A** I believe it does.

13 **Q** Okay. And do you believe that a 500-character
14 field in AT&T's dispute resolution form is sufficient to
15 fully explain a complicated dispute?

16 **A** Yes. As it was explained to me by the billing
17 person that I consulted with, when the remaining fields
18 are appropriately populated, 500 characters should be
19 enough to explain why they're disputing it.

20 **Q** Now, should this section contain language that
21 allows the parties to deviate from the form if doing so
22 allows comments and descriptions beyond a 500-character
23 limit?

24 **A** We don't think it's necessary to have more
25 than 500. One of the things that AT&T's language

1 provides is that it would be the billing party's
2 preferred dispute form. So in the case of AT&T
3 disputing a bill from Communications Authority, we would
4 be required to use CA's preferred dispute method because
5 they would be the ones that would actually have to
6 process the dispute.

7 Q Okay. Thank you.

8 I'd like to talk about Issues 23a through c.
9 And do you remember having your deposition taken on
10 April 21st, 2015?

11 A Yes.

12 Q Okay. And do you remember that a court
13 reporter was present at your deposition?

14 A Yes.

15 Q In your deposition -- let's see. I have a copy
16 available, if you'd like. It's Exhibit No. 47 and it's
17 page 37, line 14, which is Bates No. 01772.

18 A I have that.

19 Q Okay. And if you could just look over that
20 page 37 while we're passing out the page, that would be
21 great.

22 A Okay.

23 Q Okay. And in your deposition, you stated that
24 the disputed amounts totaling under \$15,000 can be
25 withheld by the disputing party and not paid; is that

1 correct?

2 **A** Yes.

3 **Q** Okay. And I'd like for you to turn to Section
4 11.9 of the general terms and conditions. And please let
5 me know when you're there.

6 **A** Okay. I'm there.

7 **Q** And this section spells out the terms for
8 unpaid charges during a dispute; is that correct?

9 **A** Yes.

10 **Q** Okay. It doesn't appear that there's an
11 explicit exception for remitting disputed amounts under
12 \$15,000. Could you please explain where in the general
13 terms and conditions that it states that disputed amounts
14 under \$15,000 can be withheld?

15 **A** Yes. In Section 11.9.1.1.

16 **Q** And can you please read out that appropriate
17 language?

18 **A** "The nonpaying party shall not be required to
19 pay a disputed amount into an escrow account if it's
20 total disputed amounts not paid into escrow do not
21 exceed \$15,000."

22 **Q** Thank you. I'd like to discuss a different
23 aspect of the escrow account. And it's my understanding
24 that this is an escrow account that AT&T would like
25 established; is that correct?

1 **A** Yes.

2 **Q** If a CLEC such as Communications Authority has
3 deposited disputed amounts and associated late payment
4 charges into escrow, has the company complied with the
5 terms of the ICA in this regard?

6 **A** Yes.

7 **Q** And does AT&T Florida believe that the late
8 payment charges should be assessed to disputed amounts
9 that can be deposited in the escrow account?

10 **A** Yes.

11 **Q** And are late payment charges for disputed
12 amounts to be deposited in the escrow account on a
13 monthly basis?

14 **A** Yes.

15 **Q** And then are those paid out at the end of the
16 dispute?

17 **A** Yes.

18 **Q** I'd like to go back to Section 11, and if you
19 look at 11.10.2.2.

20 **A** Okay.

21 **Q** In here that section requires the disputing
22 party to bear all the costs for establishing the escrow
23 account; is that correct?

24 **A** Yes.

25 **Q** If a CLEC escrowed disputed amounts and any

1 associated late payment charges and has prevailed in the
2 dispute, is the CLEC made whole by the release of those
3 funds and any related interest?

4 **A** They may or may not be depending on their
5 actual cost to establish the escrow account.

6 **Q** And what about account establishment fees?
7 Should they be included in the amount remitted to the
8 prevailing party?

9 **A** No, I don't believe so.

10 **Q** One moment, please.

11 (Pause.)

12 I'd like to go back to 11.9.1.1.

13 **A** Okay.

14 **Q** And that language says that, you know, a
15 disputed amount paid into an escrow account -- the
16 nonpaying party shall not be required to pay a disputed
17 amount into an escrow account if this total disputed
18 amount is not paid, not paid into escrow, does not exceed
19 \$15,000. Is it AT&T's understanding that the CLEC must
20 pay AT&T the disputed amount if it's under \$15,000?

21 **A** No. They can withhold that.

22 **Q** Thank you. I'd like to move now to Issue 35.
23 And I'd like to look at Mr. Ray's deposition, which is in
24 staff's Exhibit No. 46, which is specifically Bates No.
25 01580-01581. Do you have that available?

1 **A** I do not.

2 **Q** And it's my understanding that everyone else
3 should have page 61. Let me just get you a page for 61.
4 And if you could please review that and let me know when
5 you're ready.

6 **MR. HATCH:** Lee Eng, we don't have 61. We've
7 got 62 and 63.

8 **MS. TAN:** All right. Thank you.

9 (Pause.)

10 **BY MS. TAN:**

11 **Q** And just let me know when you've reviewed those
12 pages.

13 **A** I have.

14 **Q** Okay. Thank you. In his deposition, Mr. Ray
15 stated that AT&T Florida is double-dipping by requiring
16 the CLEC to pay to have the facilities between the
17 collocation and the main distribution frame constructed
18 and then charging the CLEC a monthly fee for using the
19 cable that the CLEC had installed.

20 Does AT&T Florida propose to charge a monthly
21 local channel charge for this link between
22 Communications Authority's collocation space and the
23 main distribution frame?

24 **A** There's a couple of things going on here that
25 I think have been conflated into something different.

1 Mr. Ray has talked a lot about his experience
2 with Terra Nova and what is going on with disputes with
3 AT&T pursuant to that contract.

4 What we're talking about here in Issue 35 is
5 the definition of entrance facilities. And the parties
6 have agreed that the entrance facilities extend between
7 Communications Authority's switch or its point of
8 presence in the LATA to the serving wire center.

9 When Communications Authority is collocated,
10 there are no entrance facilities involved. So when
11 they've added language -- what they've added here at
12 the end of network interconnection Section 2.9 actually
13 doesn't make any sense, and that's, that's why I object
14 to it.

15 It says that entrance facilities do not apply
16 to interconnection arrangements where the mutually
17 agreed point of interconnection is within
18 AT&T-21STATE's serving wire center and CLEC provides
19 its own transport on its side of that POI.

20 Entrance facilities are always on the CLEC
21 side of the POI. So when you're talking about
22 facilities that go between Communications Authority's
23 collocation and the cross-connect point, whether it's
24 at a multiplexer or a main distribution frame or some
25 other location within that serving wire center, that's

1 not an entrance facility. And so that's not what this
2 definition of entrance facility in Section 2.9 is about
3 at all.

4 Now, the question about whether CA is
5 entitled to claim that its collocation is where the
6 point of interconnection is located, that's the subject
7 of Issue 38 that I touch on briefly, but that is
8 primarily addressed by Mr. Neinast, because the point
9 of interconnection has to be a point on AT&T's network.
10 That's what the FCC's regulations say. And the CLEC's
11 collocation space is not AT&T's network. It is their
12 network. If it were AT&T's network, we'd have a right
13 to go into their space and mess with the equipment, and
14 we cannot. It is their network.

15 And so when they're collocated, there has to
16 be something that gets from their collocation space to
17 the actual point of interconnection on AT&T's network.
18 And Communications Authority is responsible for that
19 facility, but it's not an entrance facility.

20 **Q** Thank you. So is there a charge associated
21 though with the link between the collocation space and
22 the distribution frame?

23 **A** I would say probably.

24 **Q** Do you believe that this charge would be
25 located in the proposed pricing schedule?

1 **A** That I don't know.

2 **Q** And that is part of your exhibit, I think,
3 PHP-1?

4 **A** The pricing -- yes, the pricing sheet is part
5 of that. In the collocation attachment there's a couple
6 of places where it talks about Communications Authority
7 being responsible for those interconnection facilities
8 between their collocation equipment and where the
9 demarcation point is on AT&T's network. Whether that's
10 charged -- whether there is a specific rate for that in
11 the interconnection agreement or whether it's in AT&T's
12 tariff, that I'm not sure of, but it's not an entrance
13 facility.

14 **Q** Okay. I'd like to go ahead and look at the
15 pricing sheets and see if we can't find the charge. And
16 if you could find that charge for staff.

17 **A** I -- it might be in the collocation section,
18 which I'm not familiar with. That I don't know.
19 There's nothing in the local interconnection section
20 that addresses that that I could find.

21 **Q** Can you tell me if Witness Ray is correct in
22 stating that Communications Authority has to contract out
23 to a third party vendor to install the facility and then
24 pay a monthly charge to AT&T for it?

25 **A** Well, Communications Authority is not in

1 business yet, so they don't have anything at this time.

2 Q But would they?

3 A I don't, I don't know how they would --
4 whether they would do that or not.

5 Q And to AT&T is the main distribution frame the
6 same thing as AT&T's proposed point of interconnection?

7 A Not necessarily.

8 Q Could you explain the distinction?

9 A Sure. As I mentioned, it could be at a
10 multiplexer. AT&T only accepts interconnection at the
11 DS1 level. And if Communications Authority is bringing
12 their facilities in at the DS3 level, they would be
13 responsible for having it multiplexed down to a DS1, and
14 then there would be -- so that would be part of their
15 network as well, and the cross-connect would be on the
16 other side of that.

17 Q And can you -- I'm sorry. Go ahead.

18 A That could be a main distribution frame. It
19 could be some other type of digital cross-connect.

20 Q And can you explain what multiplexing means to
21 you?

22 A To me it means taking a either higher to lower
23 or lower to higher bandwidth facility and change the
24 speed. So if they bring a DS3 in, that has the
25 capability of handling 28 DS1 channels. So it comes in

1 as a DS3, it goes out at 28 DS1s. And those DS1s would
2 then go to AT&T's switch to a trunk port that would be
3 at the DS1 level. So the multiplexer would take the
4 DS3s and convert them down to DS1s or vice versa.

5 Q And so do you believe that there's a difference
6 between the main distribution frame and cross-connect
7 equipment that you mentioned earlier?

8 A Main distribution frame is one type of
9 cross-connect equipment.

10 Q I'd like to talk about Issue 36 now, and that
11 is staff's exhibit -- that's going to be about staff's
12 Exhibit No. 36, which is AT&T Florida's response to
13 staff's first set of interrogatories, No. 37. Do you
14 have that available to you? And that is Bates No. 00687.
15 If you do not, I do have an excerpt for you.

16 A I have it. Thank you.

17 Q And if you could just review your response and
18 let me know when you're ready.

19 A Okay.

20 Q And could you please explain how Communications
21 Authority is confusing local interconnection with UNEs?

22 A In the pricing sheet there are two places
23 where there's rates for dedicated transport interoffice
24 channel. It is available as a UNE with the limitations
25 that go along with unbundled elements, so there has to

1 be an impairment on the route, for example. And under
2 interconnection there's also a dedicated transport
3 interoffice channel that doesn't have the limitation of
4 impairment but it has a limitation regarding usage.

5 And so the language that Communications
6 Authority has proposed has two possible interpretations
7 with different regulations associated with each of
8 those interpretations.

9 Q So if there was an impairment and
10 Communications Authority needed to establish an
11 additional point of interconnection and requested a
12 dedicated transport interoffice channel for local
13 interconnection, would Communications Authority be able
14 to lease the dedicated transport from AT&T Florida at UNE
15 TELRIC rates?

16 A If they ordered a UNE dedicated transport
17 interoffice channel between the location where its first
18 POI is established and the location where its second POI
19 is established and there was impairment, and CA was
20 otherwise permitted to purchase that UNE, then we would
21 provide it as a UNE and not as interconnection because
22 that's the way it would have been ordered.

23 Q Thank you. And let's talk about Issue 61. If
24 you could look at your testimony on page 92, and
25 specifically lines 3 through 8.

1 **A** Okay.

2 **Q** And in your testimony, you state that AT&T
3 Florida proposes language in resale Section 5.2.1 to
4 which Communications Authority objects. Could you please
5 read that language out loud?

6 **A** "AT&T-21STATE shall provide CLEC with the
7 option to obtain detailed monthly billing detail which,
8 at a minimum, meets all regulatory requirements for
9 detailed billing and which provides the telephone number
10 and rate of each resold line billed for that month,
11 along with any optional features for each line and the
12 rate associated with each optional feature billed."

13 **Q** And could you please explain the term
14 "regulatory requirements for detailed billings"?

15 **A** Those were Communications Authority's words.
16 During negotiations, Communications Authority proposed
17 this very language with the exception of AT&T's
18 reference to providing them with the option to obtain
19 the detailed monthly billing.

20 So reading the regulatory requirements for
21 detailed billing, I could presume what Communications
22 Authority meant based on the language that they filed
23 in their arbitration petition, which was different,
24 where they talked about their need to provide certain
25 detail on their retail bills pursuant to those retail

1 regulations.

2 And so AT&T provides them with the option
3 through their CLEC online profile to select how much
4 detail they want to be included on the, on the bill
5 that we send them for the resale lines. As I indicated
6 earlier, Mr. Ray has said, and I believe I provided it
7 as Exhibit PHP-19 to my rebuttal testimony,
8 Communications Authority has not even looked at AT&T's
9 billing guide to see how much detail is available to
10 them by simply asking for it on their CLEC profile.

11 Q So would you be able to list all regulatory
12 requirements for detailed billing?

13 A I could not.

14 Q I'd like to look at Issue 66. Are you aware of
15 how many rates are in dispute in this, in this issue?

16 A Not off the top of my head. There's a lot of
17 them.

18 Q So would you -- if I told you there was over
19 200 separate rates in dispute, would you disagree?

20 A I would agree.

21 Q Okay. Are you aware that Communications
22 Authority has asked to change the UNE rates at issue in
23 this docket?

24 A Yes.

25 Q Okay. And do you believe that the appropriate

1 mechanism for changing UNE rates at the -- the UNE rates
2 at issue in this docket would be a new generic proceeding
3 on TELRIC rates?

4 **A** Yes.

5 **Q** And you have testified that the vast majority
6 of AT&T's proposed rates were set by this Commission in
7 previous generic proceedings; is that correct?

8 **A** Yes.

9 **Q** Is AT&T Florida advocating a new generic TELRIC
10 cost proceeding to be conducted in Florida?

11 **A** No.

12 **Q** Why not?

13 **A** Conducting a cost study and the resulting
14 proceeding to review those cost studies and set new
15 rates is a very, very time-consuming and costly process,
16 both for AT&T, for any CLECs that elect to intervene and
17 participate, and most certainly for the Commission.
18 There is no assurance that going through that process
19 would result in lower rates at all. In fact, the way
20 things are changing in the industry, by the time that
21 whole process worked its way through, it could be four
22 or five years before we actually wound up with new
23 rates. And by 2020 things could look very, very
24 different in this state.

25 **MS. TAN:** Thank you. Staff has no further

1 questions for Ms. Pellerin.

2 **COMMISSIONER BRISÉ:** Commissioners?

3 **COMMISSIONER BROWN:** Mr. Chairman.

4 Thank you for being here. Your career has
5 been with AT&T pretty much exclusively the whole time;
6 correct?

7 **THE WITNESS:** Yes.

8 **COMMISSIONER BROWN:** Over 40 years?

9 **THE WITNESS:** Yes.

10 **COMMISSIONER BROWN:** That's a lot of time
11 dedicated. You are dedicated. You've testified before
12 various commissions including the PSC --

13 **THE WITNESS:** Yes.

14 **COMMISSIONER BROWN:** -- on similar types of
15 agreements. One of the questions I have for you is
16 regarding the five-year term being proposed by CA.
17 Originally CA and AT&T agreed upon a three-year term; is
18 that --

19 **THE WITNESS:** AT&T was requesting a two-year
20 term, Communications Authority said three, is what I'm
21 told, during negotiations. And at that point in time
22 AT&T was not ready to go with three. By the time
23 Communications Authority filed their petition for
24 arbitration, they decided they needed five years. We're
25 willing to go with three. We think that three is very

1 reasonable during these times of, of rapid change.

2 **COMMISSIONER BROWN:** Okay.

3 **THE WITNESS:** And it provides both parties
4 with the ability to evolve over time and not be locked
5 into terms and conditions for a prolonged period of
6 time.

7 **COMMISSIONER BROWN:** Thank you. You've
8 answered my follow up. I appreciate it. Thanks.

9 **THE WITNESS:** Okay.

10 **COMMISSIONER BRISÉ:** Any further questions,
11 Commissioners?

12 Seeing none, AT&T, redirect.

13 **MR. FRIEDMAN:** Thank you.

14 **EXAMINATION**

15 **BY MR. FRIEDMAN:**

16 **Q** So you started doing telecommunications at,
17 what, age nine or ten? Is that --

18 **A** I'm assuming that was rhetorical.

19 **Q** You don't have to answer that.

20 Just one question I think prompted by staff's
21 questions on Issue 66 having to do with the cost study
22 and a subsequent proceeding. If AT&T Florida were to
23 conduct new TELRIC cost studies and there were to be a
24 proceeding on those studies, would you expect that the
25 inputs, the costs that go into determining rates would

1 have gone up since the rates that we're working with
2 now were set or would have gone down?

3 **A** I would expect that some would have gone up
4 and some would have gone down.

5 **Q** What costs would you expect to have gone up?

6 **A** Well, certainly labor costs would go up.

7 **Q** You talked some with Mr. Twomey about Issue 16,
8 which has to do with insurance that Communications
9 Authority would have to obtain if it's collocating on
10 AT&T's premises. Do you recall that discussion?

11 **A** Yes.

12 **Q** And do you recall some questions from
13 Mr. Twomey that focused on the infrequency of calamitous
14 events that that insurance would cover against?

15 **A** Yes.

16 **Q** Is Communications Authority asserting the
17 position, as you understand it, that they should not have
18 to obtain insurance to protect against those infrequent
19 events?

20 **A** No. Communications Authority has agreed that
21 it's appropriate to have insurance.

22 **Q** So the --

23 **A** The real debate is about how much insurance
24 they need to carry.

25 **Q** When you buy fire insurance for your house, as

1 you said you do, is the amount of coverage that you get
2 determined by your judgment of the likelihood that you'll
3 have a fire or by something else?

4 **A** It's based on the value of the property and
5 the cost to replace it in the event of a catastrophic
6 fire. It has nothing to do with the actual likelihood
7 of an occurrence of a fire.

8 **Q** So when the Commission decides what the
9 appropriate amount of insurance coverage is for these
10 events that will appear in the parties' contract, how
11 should the frequency or infrequency of the risks figure
12 into their thinking?

13 **A** It really shouldn't figure in at all. What's
14 at issue is how much insurance they should cover, and
15 that's related to the value of the property that is at
16 risk. As I indicated, we have some central offices that
17 have tens of millions of dollars of AT&T's equipment, as
18 well as equipment that's placed by other carriers. So
19 to require a \$10 million general aggregate policy is
20 more than reasonable.

21 **Q** I'll turn now to Issue 17iii having to do with
22 a proposed prohibition against Communications Authority
23 assigning the interconnection agreement to an affiliate.
24 Do you recall being asked about that by Mr. Twomey?

25 **A** Yes.

1 **Q** And do you recall being asked questions about a
2 scenario where perhaps Communications Authority might be
3 acquired by some other company?

4 **A** Yes.

5 **Q** All right. Let me ask you some questions about
6 that scenario. Can you assume with me that some company
7 called XYZ Company acquires Communications Authority in
8 the future in its entirety?

9 **A** Okay.

10 **Q** And Communications Authority retains the name
11 Communications Authority. Okay?

12 **A** Yes.

13 **Q** And Communications Authority has been operating
14 under our interconnection agreement for, let's say, a
15 year or two.

16 **A** Okay.

17 **Q** In that scenario, when CA is acquired
18 hypothetically by company XYZ, what affect would that
19 have on the acquired company's, CA's ability to continue
20 performing under our interconnection agreement?

21 **A** Probably none.

22 **Q** Okay. So we're not saying anything about what
23 would happen to their business.

24 **A** Right.

25 **Q** What does the prohibition say?

1 **A** The prohibition says that if Communications
2 Authority has an affiliate that already has an
3 interconnection agreement, that CA cannot assign its
4 agreement to that affiliate.

5 **Q** So in the situation we're talking about the
6 consequence would be that if company XYZ was already
7 operating as a competitive local exchange carrier and it
8 had its own interconnection agreement with AT&T, it could
9 not, for purposes of its own dealings with AT&T, start
10 operating under Communications Authority's agreement; is
11 that correct?

12 **A** That's right.

13 **Q** Could I direct you, please, to your rebuttal
14 testimony at page 12, starting at line 17? This is where
15 you said, "Specifically, Mr. Ray claims that AT&T Florida
16 offered to make some sort of side deal 'under separate
17 cover' regarding extending CA's ICA in evergreen status."
18 Do you remember talking with Mr. Twomey about that
19 sentence?

20 **A** Yes.

21 **Q** And I think you testified to the effect that
22 you were sure that that wasn't true, wasn't the case
23 because AT&T doesn't enter into side deals like that?

24 **A** Yes.

25 **Q** Is there any other reason apart from that that

1 you're confident that AT&T negotiator Laura Mock did not
2 say to Mr. Ray what Mr. Ray claims she said?

3 **A** Yes. I specifically asked Ms. Mock the
4 question when I first learned of Mr. Ray's assertions
5 that she had promised some sort of a side deal, and she
6 was quite emphatic that that did not take place.

7 **Q** A couple of questions on Issue 22 having to do
8 with billing forms and what billing forms a party needs
9 to use to raise a dispute.

10 Imagine, if you will, that Communications
11 Authority had a billing form of its own that did call
12 for all the information that AT&T needs but that is in
13 a different form and format from the AT&T form. Would
14 that work with AT&T's billing systems for CA, for
15 Communications Authority to use that form?

16 **A** That would still require AT&T to populate the
17 billing dispute system on a manual basis.

18 **Q** Why is that?

19 **A** The way AT&T's form is structured is very
20 particular. And when we receive an email to the dispute
21 mailbox, it goes automatically into the system that
22 processes the dispute, and that system is looking for
23 certain information in certain fields in a certain
24 format. When it receives that, it processes it through
25 untouched by human hands into the, into the system.

1 If it's coming in in anything other than that
2 precise format, it will kick out for a person to take
3 their time to actually input the information into the
4 billing dispute system.

5 **MR. FRIEDMAN:** Thank you. I have no further
6 questions. And if this is the appropriate time, I would
7 move for admission into the record the exhibits to
8 Ms. Pellerin's testimony, which are items 2 through
9 20 on Staff Exhibit 1, the Comprehensive Exhibit List.

10 **COMMISSIONER BRISÉ:** Yes. Exhibit Nos.
11 2 through 20, are there any objections?

12 **MR. TWOMEY:** None.

13 **COMMISSIONER BRISÉ:** Okay. So we'll moved
14 Exhibits 2 through 20 into the record.

15 (Exhibits 2 through 20 admitted into the
16 record.)

17 Are there any other exhibits that we need to
18 move into the record at this time? CA, I don't think
19 you proffered any exhibits. Staff?

20 **MS. TAN:** Staff has no exhibits.

21 **COMMISSIONER BRISÉ:** Okay. So with that,
22 thank you very much for your testimony today.

23 **THE WITNESS:** Thank you.

24 **COMMISSIONER BRISÉ:** Okay. Now is a good time
25 for a ten-minute break, so we'll go ahead and take a

1 ten-minute break. We'll give our court reporter a
2 little bit of rest.

3 (Recess.)

4 (Transcript continues in sequence with Volume
5 3.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 19th day of May, 2015.

19
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21
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23
24
25


LINDA BOLES, CRR, RPR
FPSC Official Hearings Reporter
(850) 413-6734

1 A Just a moment.

2 When you look at the language that AT&T is
3 proposing, which is in Section 11.9.1.1, it states that
4 they are not required to pay into escrow if the total
5 disputed amounts don't exceed 15,000. So if they
6 disputed \$10,000 this month and \$12,000 next month and
7 30,000 the third month, you know, by then certainly
8 you're over the \$15,000 thresholds and we would expect
9 that they would escrow all of it at that point.

10 Q So if the amount in dispute -- if the amounts
11 in dispute are under \$15,000, can the CLEC withhold
12 those payments during the dispute or would it have to
13 remit them when billed?

14 A It can withhold them.

15 Could we take a break?

16 Q Yes, we can. Why don't we go ahead and take
17 a -- is five minutes okay?

18 A Yes. Thank you.

19 Q Come back at 12:05.

20 (Whereupon, a recess was taken.)

21 BY MS. TAN:

22 Q Let's go ahead and get started again.

23 A Okay.

24 Q I think where we're at right now is if you
25 could look at the General Terms and Conditions 11.9.1.

1 A CA does not believe that those types of
2 facilities are properly classed as entrance facilities.

3 Q Okay. Thank you.

4 Is Communications Authority aware of any laws,
5 statutes, court orders, et cetera, that support its
6 position that entrance facilities should only apply if
7 Communications Authority requests AT&T Florida to
8 provide transport from AT&T Florida's central office to
9 another location?

10 A I believe that we are, in general -- that we
11 can, in general, provide that, but I'm going to need to
12 defer to Counsel on that.

13 Q Okay. That's fine. Thank you.

14 The parties have agreed upon interconnection
15 language in Attachment 12, Section 3.34.13 and 3.35.13,
16 which states that the co-locator is responsible for the
17 facilities between the co-locator's equipment and the
18 demarcation point.

19 If the parties have agreed to this language,
20 why is Communications Authority now arguing that it
21 should not be responsible for the intra-building
22 facilities between the co-location and the point of
23 interconnection?

24 A Communications Authority objects to this on
25 the grounds that the facilities that connect the

1 co-location to the main distribution frame are
2 facilities that the CLEC has already had to install
3 itself and pay an AIS to install. Those facilities were
4 not put in by AT&T. AT&T didn't spend any money doing
5 that. Those were part of the CLEC's expenses and costs
6 to build its co- location.

7 So, AT&T is double dipping here. On one hand,
8 it is forcing the CLEC to pay an AIS to construct those
9 facilities between the co-location and the main
10 distribution frame. And then on the other hand, it is,
11 then, charging the CLEC a monthly fee for using the
12 cable that the CLEC paid to put in in the first place.

13 Q If you could, refer to Patricia Pellerin's
14 rebuttal testimony, specifically -- oh, I'm sorry.
15 Nevermind.

16 A Okay.

17 Q If you could, do me a favor and look at
18 Communications Authority's response to staff's third set
19 of interrogatories, specifically No. 75.

20 A Okay. I have it.

21 Q You state here that AT&T has called the
22 circuits in question entrance facilities; is that
23 correct?

24 A They have called them entrance facilities
25 among other things at various times, yes.