

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 3

(Pages 408 through 530)

PROCEEDINGS: HEARING

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

DATE: Wednesday, May 6, 2015

TIME: Commenced at 3:20 p.m.
Concluded at 4:28 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

NAME: PAGE NO.

SCOTT MCPHEE

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P R O C E E D I N G S

(Transcript continues in sequence following
Volume 2.)

COMMISSIONER BRISÉ: Okay. AT&T, call your
next witness.

MR. FRIEDMAN: Thank you. AT&T calls Scott
McPhee.

Whereupon,

SCOTT MCPHEE

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 How are you, Mr. McPhee?

A I'm fine. Thank you.

Q You have been sworn in.

A Yes.

Q Please state your name and your business
address.

A My name is Scott McPhee. My business address
is 5001 Executive Parkway, San Ramon, California.

Q By whom are you employed and in what capacity?

A I'm an Associate Director in Wholesale
Regulatory Policy, and I'm employed by AT&t services,
Inc.

1 **Q** Did you prepare and cause to be filed in this
2 matter direct testimony consisting of 38 pages with no
3 exhibits?

4 **A** Yes.

5 **Q** Do you have any corrections to that direct
6 testimony?

7 **A** No.

8 **Q** Did you also prepare and cause to be filed in
9 this matter the rebuttal testimony of Scott McPhee
10 consisting of 12 pages with three exhibits?

11 **A** Yes.

12 **Q** Do you have any corrections to that testimony?

13 **A** I have one small correction on page 5, line
14 32.

15 **Q** Okay. Give us just a second.

16 Line 32. Okay.

17 **A** The phrase should read "The E911 customer has
18 designated AT&T Florida."

19 **Q** So "designed" should become "designated"?

20 **A** Correct.

21 **Q** And that's your only correction?

22 **A** Yes.

23 **Q** Is the direct testimony and the rebuttal
24 testimony all still true as it was when you submitted it?

25 **A** It is.

1 **MR. FRIEDMAN:** Commissioner Brisé, at this
2 time AT&T Florida moves for admission into the record of
3 the direct and rebuttal testimony of Scott McPhee.

4 **COMMISSIONER BRISÉ:** Okay. At this time we'll
5 move the direct and rebuttal testimony of Mr. McPhee
6 into the record, seeing no objections. Any objection?

7 **MR. TWOMEY:** No.

8 **COMMISSIONER BRISÉ:** All right.
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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is J. Scott McPhee. My business address is 5001 Executive Parkway, San
4 Ramon, California, 94583.

5 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

6 A. I am an Associate Director – Wholesale Regulatory Policy & Support for AT&T
7 Services, Inc. I work on behalf of the AT&T incumbent local exchange carriers
8 (“ILECs”) throughout AT&T’s 21-state ILEC territory. I am responsible for
9 providing regulatory and witness support relative to various wholesale products and
10 pricing, supporting negotiations of local interconnection agreements (“ICAs”) with
11 Competing Local Exchange Carriers (“CLECs”) and Commercial Mobile Radio
12 Service (“CMRS”) providers, participating in state commission and judicial
13 proceedings, and guiding compliance with the federal Telecommunications Act of
14 1996 (“1996 Act” or “Act”) and its implementing rules.

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

16 A. I received my Bachelor of Arts degree with a double major in Economics and
17 Political Science from the University of California at Davis. I began my employment
18 with SBC Communications Inc. in 2000 in the Wholesale Marketing – Industry
19 Markets organization as Product Manager for Reciprocal Compensation throughout
20 SBC’s legacy 13-state region. My responsibilities included identifying policy and
21 product issues to assist negotiators and witnesses for SBC’s reciprocal compensation
22 and interconnection arrangements, as well as SBC’s transit traffic offering. In June of

1 2003, I moved into my current role as an Associate Director in the Wholesale
2 Marketing Product Regulatory organization. In this position, my responsibilities
3 include helping define AT&T ILECs' positions on certain issues for Wholesale
4 Marketing, and ensuring that those positions are consistently articulated in
5 proceedings before state commissions.

6 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY**
7 **PROCEEDINGS?**

8 A. Yes. I have filed testimony and/or appeared in regulatory proceedings in many of the
9 states where AT&T ILECs provide local service, including Florida.

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

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

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

14 A. I will discuss AT&T Florida's positions on arbitration Issues 33a, 33b, 34, 39a, 39b
15 and 41.

16 **II. DISCUSSION OF ISSUES**

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

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

23 **Q. WHAT IS THE DISPUTE?**

1 A. Federal, state, city, county and municipal governments require that taxes be collected
2 on monies billed to telecommunications end users every month. When a CLEC
3 purchases resale services from AT&T Florida, AT&T Florida bills the CLEC (in this
4 case, Communications Authority (“CA”)) those taxes (and other applicable
5 surcharges), and then remits those taxes (and any other applicable surcharges), to the
6 appropriate authorities. CA, however, proposes to modify this process via an
7 “exemption” and directly pay the governmental body the taxes for the end users it
8 serves via the resale services purchased from AT&T Florida.

9 **Q. WHAT ARE RESALE SERVICES?**

10 A. Resale under section 251(c)(4) of the 1996 Act is an ILEC duty “to offer for resale at
11 wholesale rates any telecommunications service that the carrier provides at retail to
12 subscribers who are not telecommunications carriers.” Therefore, resale services are
13 AT&T Florida’s retail telecommunications services that AT&T Florida sells to CA
14 for resale to CA’s end users. AT&T Florida sells these services to CA at the retail
15 price, less a discount, which in Florida is 21.83% for residential lines and 16.81% for
16 business lines. CLECs may purchase resale services from AT&T Florida as an
17 alternative to serving their customers via their own facilities-based network.

18 When CA purchases resale services from AT&T Florida and resells those
19 services to its end user customer, that customer has a retail relationship with CA for
20 purposes of buying and paying for those services, but the underlying network and call
21 functions are performed by AT&T Florida, and the CA resale customer is assigned a
22 telephone number that belongs to AT&T Florida, *i.e.*, a number that is within a block

1 of numbers (NPA-NXX) that AT&T Florida obtained from the numbering authority.
2 As result, calls to and from the CA resale customer appear on the network as if they
3 terminated to – or originated from – an AT&T Florida end user customer. Thus, for
4 example, reciprocal compensation for calls originated by resale end users is paid by
5 AT&T Florida, because it is AT&T Florida-originated traffic as far as the network is
6 concerned.

7 **Q. ARE RESALE SERVICES SUBJECT TO TAXES AND SURCHARGES?**

8 A. Yes. Everything pertaining to the treatment and billing of a resale line is the same as
9 it is for a retail line, including any applicable taxes and surcharges. Because a resale
10 residential or business line is operationally identical to the corresponding AT&T
11 Florida retail line, AT&T Florida handles all taxes and surcharges the same as it does
12 for its own retail lines. When AT&T Florida bills one of its retail customers, the bill
13 includes all applicable taxes and fees as well as AT&T Florida’s retail charges. In the
14 case of a resale line, AT&T Florida bills the CLEC reseller, and just as it includes
15 taxes on its retail bills, AT&T Florida bills the CLEC all applicable taxes and fees as
16 well as AT&T Florida’s resale-discounted charges.

17 **Q. MAY THERE BE EXEMPTIONS FROM TAXES AND/OR SURCHARGES?**

18 A. Yes, and AT&T Florida’s CLEC website, CLEC Online, explains how a resale CLEC
19 can apply for and receive tax exemptions from the appropriate taxing agency. The
20 website contains the appropriate forms and instructions at
21 <https://clec.att.com/clec/shell.cfm?section=2544>. As it states there, for Florida, a
22 “State issued tax document is required. The CLEC must go to the state and request a

1 certificate and then submit a completed and signed copy to AT&T Tax exemption
2 group in order to be considered for State exemptions.” Once the CLEC has
3 completed this process, AT&T Florida no longer assesses tax charges on the exempt
4 lines. While there is one Federal Excise Tax exemption form, there are multiple state
5 tax exemption forms that may need to be completed and processed.

6 **Q. HAVE THE PARTIES AGREED ON CONTRACT LANGUAGE THAT**
7 **TREATS PRODUCTS OR SERVICES THAT MAY BE EXEMPT FROM**
8 **TAX?**

9 A. Yes. The parties have agreed on such language, but the contract provisions that
10 include the agreed language also include disputed language. First, GT&C section
11 37.3 spells out the application and treatment of tax exempt products and services.
12 Section 37.3 reads as follows, with AT&T Florida’s proposed language in bold
13 underscore and CA’s proposed language in bold italics:

14 37.3 To the extent a purchase of products or services under this
15 Agreement is claimed by the purchasing Party to be for resale or
16 otherwise exempt from a Tax, the purchasing Party shall furnish to the
17 providing Party an exemption certificate in the form reasonably
18 prescribed by the providing Party and any other information or
19 documentation required by Applicable Law or the respective
20 Governmental Authority. ***Purchasing Party shall have the right to***
21 ***claim and receive exemption from any governmental tax, fee or***
22 ***surcharge which it can reasonably prove that it remits directly to the***
23 ***proper government entity. If an official certificate of exemption does***
24 ***not exist for a specific tax or government surcharge, the parties agree***
25 ***that proof of payment of the tax or surcharge directly to the***
26 ***government entity shall constitute adequate proof of exemption.*** Prior
27 to receiving such exemption certificate and any such other required
28 information or documentation, the Providing Party shall have the right
29 to bill, and the Purchasing Party shall pay, Tax on any products or
30 services furnished hereunder as if no exemption were available, subject
31 to the right of the Purchasing Party to pursue a claim for credit or refund
32 of any such Tax pursuant to the provisions of this Section 37.0 and the
33 remedies available under Applicable Law. If it is the position of the

1 purchasing Party that Applicable Law exempts or excludes a purchase
2 of products or services under this Agreement from a Tax, or that the Tax
3 otherwise does not apply to such a purchase, but Applicable Law does
4 not also provide a specific procedure for claiming such exemption or
5 exclusion or for the purchaser to contest the application of the Tax
6 directly with the respective Governmental Authority prior to payment,
7 then the providing Party **may in its discretion agree not to bill and/or**
8 **not to shall not** require payment of such Tax by the purchasing Party,
9 provided that the purchasing Party (i) furnishes the providing Party with
10 any exemption certificate requested by and in the form reasonably
11 prescribed by the providing Party, (ii) furnishes the providing Party with
12 a letter signed by an officer of the purchasing Party setting forth the
13 basis of the purchasing Party's position under Applicable Law; and (iii)
14 furnishes the providing Party with an indemnification agreement,
15 reasonably acceptable to the providing Party, which holds the providing
16 Party harmless from any Tax, interest, penalties, loss, cost or expenses
17 (including attorney fees) that may be incurred by the providing Party in
18 connection with any claim asserted or actions taken by the respective
19 Governmental Authority to assess or collect such Tax from the
20 providing Party.

21 This language clearly spells out the process CA must follow in order to have a
22 product or service treated as tax-exempt. Once the exemption is in place, AT&T
23 Florida no longer remits tax payments to the governmental agency or bills CA for the
24 taxes for the exempt products or services.

25 Similarly, GT&C Section 37.4 provides a process CA can use to challenge a
26 tax with the appropriate governmental authority:

27 To the extent permitted by and pursuant to Applicable Law, and subject
28 to the provisions of this Section 35.0,¹ the purchasing Party shall have
29 the right to contest with the respective Governmental Authority, or if
30 necessary under Applicable Law to have the providing Party contest (in
31 either case at the purchasing Party's expense) any Tax that the
32 purchasing Party asserts is not applicable, from which it claims an
33 exemption or exclusion, or which it claims to have paid in error;

¹ The references to "this Section 35.0" in section 37.4 are a clerical error in the current version of the ICA. The references will be correct to say "this Section 37.0" in the final version.

1 provided, however, that (i) the purchasing Party shall ensure that no lien
2 is attached to any asset of the providing Party as a result of any contest
3 of a disputed Tax; (ii) with respect to any Tax that could be assessed
4 against or collected from the providing Party by the respective
5 Governmental Authority, the providing Party shall retain the right to
6 determine the manner of contesting such disputed Tax, including but not
7 limited to a decision that the disputed Tax will be contested by pursuing
8 a claim for credit or refund; (iii) except to the extent that the providing
9 Party has agreed pursuant to this Section 35.0 not to bill and/or not to
10 require payment of such Tax by the purchasing Party pending the
11 outcome of such contest, the purchasing Party pays any such Tax
12 previously billed by the providing Party and continues paying such Tax
13 as billed by the providing Party pending the outcome of such contest. In
14 the event that a disputed Tax is to be contested by pursuing a claim for
15 credit or refund, if requested in writing by the purchasing Party, the
16 providing Party shall facilitate such contest (i) by assigning to the
17 purchasing Party its right to claim a credit or refund, if such an
18 assignment is permitted under Applicable Law; or (ii) if an assignment
19 is not permitted, by filing and pursuing the claim on behalf of the
20 purchasing Party but at the purchasing Party's expense. Except as
21 otherwise expressly provided in this Section 35.0, nothing in this
22 Agreement shall be construed to impair, limit, restrict or otherwise
23 affect the right of the providing Party to contest a Tax that could be
24 assessed against or collected from it by the respective Governmental
25 Authority. With respect to any contest of a disputed Tax resulting in a
26 refund, credit or other recovery, as between the purchasing Party and the
27 providing Party, the purchasing Party shall be entitled to the amount that
28 it previously paid, plus any applicable interest allowed on the recovery
29 that is attributable to such amount, and the providing Party shall be
30 entitled to all other amounts. ***Taxes for which the Purchasing Party
31 has provided evidence of direct payment to the Governmental
32 Authority shall not be treated as contested under this provision and
33 shall be entitled to exemption by the Providing Party.***

34 **Q. CA'S PROPOSED LANGUAGE FOR BOTH SECTIONS 37.3 AND 37.4 USES**
35 **THE WORD "EXEMPTION." AS YOU UNDERSTAND IT, WHAT DOES CA**
36 **MEAN BY THAT WORD?**

37 **A.** CA uses the term "exemption" in a manner that is inconsistent with normal usage and
38 with the contract language previously agreed upon by the Parties. In the agreed
39 language, "exemption," for purposes of addressing the application of taxes, means
40 *being released from, or not subject to, an obligation (to pay taxes) by the appropriate*

1 *government authority*. So, for example, a charitable organization may have an
2 exemption from certain taxes in the sense that the government excuses it from paying
3 those taxes. In its proposed language, CA is not using the word in that way. Rather,
4 when CA's language says "exemption," it is referring to a situation where a tax
5 applies (thus, no exemption in the usual sense), but where CA seeks to be excused
6 from paying the tax amount (which AT&T Florida remitted to the government) to
7 AT&T Florida.

8 **Q. SO IS THE DISPUTE REALLY ABOUT THE TAX-EXEMPTION PROCESS,**
9 **AND HOW THE PARTIES WILL GO ABOUT FULFILLING THEIR**
10 **OBLIGATION WITH RESPECT TO THAT PROCESS?**

11 A. No, the issue is whether CA can improperly pay a tax to a government authority that
12 AT&T Florida is supposed to pay – and does in fact pay – on resale services and then
13 obtain reimbursement from AT&T Florida for those taxes.

14 **Q. WHY DO YOU SAY THAT AT&T FLORIDA IS SUPPOSED TO PAY THESE**
15 **TAXES, AND THAT IT WOULD BE IMPROPER FOR CA TO DO SO?**

16 A. Because the Parties have agreed on language in GT&C section 37.1 that clearly
17 delineates each Party's responsibilities with respect to taxes, and section 37.1 says:

18 Except as otherwise provided in this Section, with respect to any
19 purchase of products or services under this Agreement, if any Tax is
20 required or permitted by Applicable Law to be billed to and/or collected
21 from the purchasing Party by the providing Party, then: (i) the
22 providing Party shall have the right to bill the purchasing Party for such
23 Tax; (ii) the purchasing Party shall pay such Tax to the providing Party;
24 and (iii) **the providing Party shall pay or remit such Tax to the**
25 **respective Governmental Authority**. Taxes shall be billed as a
26 separate item on the invoice. Nothing shall prevent the providing Party
27 from paying any Tax to the appropriate Governmental Authority prior to
28 the time: (i) it bills the purchasing Party for such Tax, or (ii) it collects
29 the Tax from the purchasing Party. (Emphasis added.)

1 The taxes we are talking about are in fact “permitted by Applicable Law to be
2 billed to and/or collected from the purchasing Party [CA] by the providing Party
3 [AT&T Florida].” Consequently, CA and AT&T Florida have agreed that AT&T
4 Florida is to pay the taxes to the governmental authority and pass the charges through
5 to CA. CA’s proposed language for sections 37.3 and 37.4 would nullify what the
6 Parties have already agreed upon, and so is an improper attempt to renege on that
7 agreement.

8 **Q. WHAT IF THE PARTIES HAD NOT ALREADY AGREED ON GT&C**
9 **SECTION 37.1?**

10 A. CA’s position would still be unreasonable. As I have explained, AT&T Florida pays
11 and passes through taxes on resale lines in the same way as it does on retail lines,
12 except that it passes the taxes through to the CLEC rather than the AT&T Florida
13 retail customer. And for good reason, since resale lines are in all operational respects
14 identical to retail lines. To the best of my knowledge, every reseller in Florida is fine
15 with this arrangement, and there is no chance of any CLEC being double-billed under
16 this arrangement, or double-paying, as long as the CLEC does not foolishly pay taxes
17 that AT&T Florida is supposed to pay. CA is asking the Commission to require
18 AT&T Florida to revamp its billing systems to accommodate CA alone, but with no
19 sound justification. All CA has to do if it wants to avoid any risk of double-payment
20 is to let AT&T Florida pay the taxes, as the parties have in fact agreed in section 37.1.

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

22 A. The Commission should reject CA’s proposed additions to GT&C Sections 37.3 and
23 37.4.

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

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

7 **Q. WHAT IS THE DISPUTE?**

8 A. Appendix E911 provides terms and conditions under which AT&T Florida will
9 provide CA with access to E911 services where AT&T Florida is the E911 network
10 service provider. E911 services often include surcharges or fees payable to an E911
11 agency for the provisioning of E911 services in a specific community. The dispute is
12 over which carrier should remit those surcharges and fees when AT&T Florida
13 provides CA with resale services. As the resale provider, AT&T Florida provides a
14 complete product, including the billing of appropriate E911 surcharges, for a set price
15 (retail, less the resale discount as discussed above). Consequently, AT&T Florida is
16 the appropriate party to remit these charges to the taxing authority. CA, on the other
17 hand, proposes contract language to entitle CA to aggregate its facilities-based and its
18 resale line data for purposes of CA remitting E911 surcharges and fees.

19 **Q. IS THIS ISSUE SIMILAR TO ISSUE 33a THAT YOU JUST DISCUSSED?**

20 A. Yes, it is. Instead of addressing taxes, this dispute addresses surcharges associated
21 with E911 services. And just as I have described with respect to Issue 33a, CA here
22 proposes language that would excuse CA from paying a portion of AT&T Florida's
23 resale bill. CA has proposed that AT&T Florida cease paying E911 surcharges in
24 those areas where CA is both a reseller and a facilities-based CLEC, so that CA

1 would then pay E911 surcharges for *all* of its retail lines, whether provisioned via its
2 facilities-based network, or via resale from AT&T Florida.

3 **Q. WHAT IS THE DISPUTED LANGUAGE?**

4 A. The disputed language is in section 5.2.2 of the 911/E911 Attachment, which reads as
5 follows with the bold italics language proposed by CA and opposed by AT&T
6 Florida:

7 5.2.2 For Resellers, the ILEC shall serve as a clearinghouse between
8 Resellers and PSAPs² except where state law requires Reseller to collect
9 and remit directly to the appropriate 911 Authority, ***or in the case of a***
10 ***Facility based CLEC which also has resale service from AT&T-***
11 ***21STATE, and which remits and reports its facility-based and resale-***
12 ***based data in the aggregate to the 911 Customer.*** The Parties agree
13 that:

14 5.2.2.2 AT&T SOUTHEAST REGION 9-STATE will provide the 911
15 Customer a monthly settlement letter which provides the total number
16 of access lines broken down into residence and business line totals only.
17 If state statutes require a break out of Reseller information, the AT&T
18 SOUTHEAST REGION 9-STATE shall include this information upon
19 request by the 911 Customer. ***In the case of a facility-based CLEC***
20 ***which also has resale service, and which remits and reports its facility-***
21 ***based and resale-based data in the aggregate to the 911 Customer,***
22 ***AT&T SOUTHEAST REGION 9-STATE shall omit CA's resale lines***
23 ***from its own reporting to 911 Customer. If CA claims exemption from***
24 ***911 surcharges under this provision, CA shall be solely responsible for***
25 ***remitting and reporting of 911 surcharges to the 911 Customer.***

26 **Q. WHY IS IT APPROPRIATE FOR AT&T FLORIDA TO REMIT E911**
27 **SURCHARGES ASSOCIATED WITH RESALE LINES?**

28 A. As I described in Issue 33a, whenever AT&T Florida provides a resale product or
29 service, the entirety of that product or service is identical to AT&T Florida's
30 corresponding retail offering, with the exception that the resold service may be

² A PSAP (Public Safety Answering Point) is a call center that answers emergency calls within a particular geographic area.

1 rebranded as that of the resale purchasing CLEC. AT&T Florida treats all resale
2 products and services, sold to all carriers, in the same way, and there is no reason for
3 a resale purchaser to require that AT&T Florida parse its resale billing in any way.
4 Resale services are sold as a complete product or service; all rates, taxes, surcharges
5 and fees are included in the billing in the same way as they are included in AT&T
6 Florida's retail offerings.

7 **Q. IN ITS COMMENTS ON THIS ISSUE, CA ASSERTED THAT IT CANNOT**
8 **SEPARATE OUT ITS FACILITIES-BASED LINES FROM ITS RESALE**
9 **LINES FOR PURPOSES OF DETERMINING CA'S E911 SURCHARGE**
10 **OBLIGATIONS FOR ITS FACILITIES-BASED LINES.³ SHOULDN'T CA**
11 **BE CAPABLE OF KNOWING THE LOCATION OF EACH OF ITS**
12 **CUSTOMERS, REGARDLESS OF WHETHER THEY ARE FACILITIES-**
13 **BASED OR RESALE-PROVISIONED?**

14 A. Yes. A telecommunications company should have the technical and managerial
15 resources in place to know who it is serving and where its customers reside. It should
16 also know which of its customers are facilities-based and which are resale. It appears,
17 however, based on CA's Comments, that CA is uncertain to whom it is providing
18 resale services, as well as the location of its resale customers. Specifically, CA states,
19 "AT&T does not provide any way for CA to determine the county for each resale line
20 for which AT&T bills the E911 surcharge on its bill." This statement is puzzling,
21 because if CA does not know where its resale customers reside, how can CA possibly
22 know the appropriate surcharge amounts to bill its customers, and what amounts to
23 remit to each of the different municipalities? Furthermore, it would seem that CA

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 should be able to discern from its billing records which of its customers are facilities-
2 based and which are resale – which in turn would allow CA to remit E911 surcharges
3 only on the lines of its facilities-based customers.

4 **Q. DOES AT&T FLORIDA PROVIDE GUIDANCE FOR CLECS ON EACH**
5 **PARTY’S RESPONSIBILITIES FOR REMITTING E911 SURCHARGES**
6 **AND FEES?**

7 A. Yes. In AT&T Florida’s online resource guide for CLECs, CLEC Online, AT&T
8 Florida provides E911 technical documents, including one titled “CLEC Users Guide
9 to E911 for Facilities Based Providers.”⁴ Section 2 is titled Roles and
10 Responsibilities and states in pertinent part:

11 **CLEC Responsibilities**

- 12
- 13 1. The CLEC has a responsibility to contact the county / parish to determine the
14 following information:
 - 15
 - 16 ◦ Default ESN (The default ESN is a 3-digit number that translates to a specific
17 PSAP where calls are routed in case the CLEC cannot deliver ANI from their
18 switch to the AT&T E911 tandem).
 - 19
 - 20 ◦ Surcharge information - Surcharge information refers to the money billed by
21 the CLEC on behalf of the county / parish to their customers for providing
22 E911 service. The CLEC must also obtain information from the county /
23 parish in order to remit these surcharges back to the county / parish. A list of
24 county/parish coordinators can be found on the NENA Website at
25 <http://www.nena.org>. Click on Chapters and Contacts for the state for which
26 you need information.
 - 27

28 ****NOTE:**

⁴ The document can be found at
<https://clec.att.com/clec/hb/shell.cfm?section=735&redirectsection=735> under the
“Technical” heading, it is in the link “SE 911Prod User Guide.” Direct link to the document:
https://clec.att.com/clec_documents/unrestr/hb/Nb/735//SE%20clec-user-guide-911%20rev%20Jan%202013.doc

- 1 ▪ **Resale CLECs:** AT&T will bill Resale Providers the applicable 911/E911
2 surcharges who will remit to AT&T; AT&T will then remit surcharges to the
3 appropriate county / parish.

4 This guidance, which addresses each party's obligations with respect to payment of
5 E911 surcharges, is available to all carriers that purchase E911 services from AT&T
6 Florida. Consistent with those statements of responsibility, AT&T Florida bills the
7 resale purchaser (CA, in this instance), and then remits the charges to the appropriate
8 E911 government authority.

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

- 10 A. The Commission should reject CA's proposed additions to E911 section 5.2.2

11 **ISSUE 34: SHOULD COMMUNICATIONS AUTHORITY BE REQUIRED TO**
12 **INTERCONNECT WITH AT&T FLORIDA'S E911 SELECTIVE**
13 **ROUTER?**

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

15 **Q. WHAT IS THE ISSUE?**

- 16 A. The issue is whether or not CA can obtain E911 services from a provider other than
17 AT&T Florida in areas where AT&T Florida is the E911 service provider.

18 **Q. DOES ATTACHMENT 5 – 911-E911 REQUIRE CA TO USE AT&T**
19 **FLORIDA TO CONNECT TO ALL 911/E911 SERVICES IN THE STATE OF**
20 **FLORIDA?**

- 21 A. No. Attachment 5 only applies where AT&T Florida is the authorized E911 service
22 provider, that is, where AT&T Florida is providing E911 network services to an E911
23 customer (such as a municipality or local government) and/or Public Safety

1 Answering Point (“PSAP”).⁵ E911 customers contract with a service provider to
2 provide their E911 network services, and all other carriers connect to that 911 service
3 provider for purposes of routing their 911 calls to the PSAP. AT&T Florida is the
4 designated 911/E911 service provider for many E911 customers. Other E911
5 customers in Florida contract with different service providers, such as Intrado or
6 CenturyLink. If CA has end user customers located in the E911 service areas served
7 by one of those carriers, then CA would presumably obtain those E911 services from
8 that carrier.

9 **Q. WHAT WOULD BE THE EFFECT OF CA’S PROPOSED CHANGES TO**
10 **SECTIONS 3.3.2 AND 4.1 – 4.3 OF APPENDIX E911?**

11 A. CA’s proposed language would allow CA to somehow provision connectivity to
12 AT&T Florida’s E911 customers without connecting through AT&T Florida’s
13 established E911 network for those customers. Specifically, CA proposes that it can
14 obtain E911 interconnection from some other third party service provider.

15 **Q. HOW DOES A CARRIER PROVIDE E911 NETWORK SERVICES FOR A**
16 **PSAP?**

17 A. A carrier that provides E911 network services, such as AT&T Florida, typically
18 provides a complete service platform. Three integrated components provide the
19 routing and transmission of an E911 call. The first is a Selective Router (“SR”),
20 which is a specialized switch used to route a 911 call to the proper PSAP based upon
21 the number and location of the call. Second, the Automatic Location Identification
22 (“ALI”) (or E911) database contains end user information, such as the caller’s

⁵ For purposes of my discussion here, “E911 customers” and “PSAPs” are interchangeable.

1 telephone number, the address/location of the telephone, and sometimes additional
2 emergency services information that is automatically displayed at the PSAP during an
3 emergency call. The third component is the network facilities used to connect the
4 PSAP to the SR and to the ALI database.

5 **Q. HOW DO OTHER CARRIERS, SUCH AS CLECS, ROUTE THEIR E911**
6 **CALLS TO PSAPS WHERE AT&T FLORIDA IS THE E911 NETWORK**
7 **SERVICE PROVIDER?**

8 A. In general, E911 calls are sent over the interconnection that each carrier maintains
9 with AT&T Florida. More specifically, when a CLEC end user dials 911, the call is
10 routed from that end user's provider's end office switch to AT&T's Selective Router,
11 which is housed at a designated AT&T Florida tandem switch (E911 tandem). That
12 emergency call contains Automatic Number Information ("ANI") within the SS7 data
13 associated with the call, and the SR performs a lookup of the ANI information in
14 order to find the associated Emergency Services Number ("ESN") via a Telephone
15 Number/ESN translation table. Based on the ESN, the call is then switched, via
16 dedicated trunk, to the appropriate PSAP. Once the PSAP receives the call, ANI
17 information is sent to the ALI processor for retrieval of the end user subscriber's
18 information, which is then displayed on a screen at the PSAP for use by the E911
19 operator. From there, and based upon the caller's needs, the PSAP operator may
20 transfer the call to the appropriate responding agency, *e.g.*, fire, police or ambulance.

21 **Q. WHERE AT&T FLORIDA IS THE E911 NETWORK SERVICE PROVIDER**
22 **FOR AN E911 CUSTOMER, ARE THERE ANY OTHER E911 NETWORK**
23 **SERVICE PROVIDERS SERVING THAT SAME CUSTOMER FOR**
24 **LANDLINE CALLS?**

1 A. No. And I really can't see why a PSAP would want or require duplicative E911
2 network service providers for the same location. As I have described, E911 network
3 service providers provide a robust and complete E911 platform; there is no need for
4 an E911 customer to incur additional expense or complexity by having multiple
5 duplicative networks in place.

6 **Q. IS IT POSSIBLE FOR A CARRIER SUCH AS CA TO USE A THIRD-PARTY**
7 **"AGGREGATOR" TO DELIVER ITS END USER 911 CALLS TO THE**
8 **APPROPRIATE PSAP?**

9 A. Yes, it is possible. Essentially, an aggregator for E911 traffic is a third-party
10 middleman between CA's network and AT&T Florida's E911 tandem, which adds an
11 additional layer of complexity to an E911 call destined to a PSAP.

12 **Q. WHAT WOULD BE THE CONSEQUENCES IF CA DID NOT ROUTE ITS**
13 **END USERS' 911 CALLS DIRECTLY TO AT&T FLORIDA, AS CA'S**
14 **PROPOSED LANGUAGE CONTEMPLATES?**
15

16 A. As the Florida 911 system has been designed, a 911 call should be delivered to the
17 correct PSAP with the information about the caller's location transmitted
18 expeditiously. However, every time another carrier is introduced into a call sequence,
19 another point of potential failure is introduced as well. The danger is that calls might
20 be delivered to the wrong PSAP or without the caller's location, which could delay
21 the dispatch of emergency assistance. Additionally, there are no mechanisms by
22 which to ensure that third party 911 aggregators (*e.g.*, Intrado) have sufficient
23 trunking capacity. Insufficient trunking capacity could result in call blockage (*i.e.*, in
24 911 calls failing to complete). Finally, 911 aggregation increases the risk of call
25 blockage due to a trunking maintenance problem of the trunking provider and/or

1 intermediate carriers that switch and/or transport the 911 traffic for eventual
2 connection to AT&T Florida's selective router and the responsible PSAP.

3 **Q. ARE THERE ANY ADDITIONAL RISKS?**

4

5 A. Yes. While it is possible to mitigate the risks of 911 call aggregation, if an aggregator
6 mixes different types of traffic on the same trunk group *e.g.*, wireless, VoIP, and
7 traditional landline, any default routing requested by the PSAP could be negated,
8 resulting in misrouted 911 calls. In addition, call aggregation increases the difficulty
9 of tracing a call to the originator in an emergency situation when call data is not
10 available and/or not correct in the E911 database.

11 **Q. YOU MENTIONED DEFAULT ROUTING REQUESTED BY PSAPS.
12 PLEASE EXPLAIN.**

13

14 A. Default routing is where a PSAP pre-arranges to alternately route its traffic to another
15 PSAP in the event that the first PSAP is out of service (*e.g.*, night closedown) or all of
16 its 911 trunks are in use. That second PSAP will have an established method of
17 handling those emergency calls, and the two PSAPs work together to handle these
18 situations. If the second PSAP were to receive a call that it was ill-prepared to deal
19 with, then additional time would be required to route the 911 caller to the correct
20 PSAP in order to dispatch first responders from the correct jurisdiction. Each PSAP
21 that has default routing established as part of its 911 service adds complexity and cost
22 to providing 911 service, because trunk groups for each default-routed PSAP must
23 use unique routes. A PSAP may even have different default routes for wireless traffic

1 than it does for wireline traffic, which is under the control of the given PSAP, not
2 AT&T Florida.

3 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 34?**

4

5 A. It should approve AT&T Florida's proposed language, which requires that CA
6 directly connect with AT&T Florida's Selective Router in those areas where AT&T
7 Florida is an E911 agency's designated network service provider.

8 **ISSUE 39a: SHOULD THE ICA STATE THAT COMMUNICATIONS**
9 **AUTHORITY MAY USE A THIRD PARTY TANDEM PROVIDER TO**
10 **EXCHANGE TRAFFIC WITH THIRD PARTY CARRIERS?**

11 **Affected Contract Provisions: Network Interconnection Att. § 4.1.6**
12

13 **Q. WHAT IS THE DISAGREEMENT?**

14 A. CA has proposed language for section 4.16 of the Network Interconnection
15 Attachment concerning CA's use of third party tandem providers to exchange traffic
16 with carriers that are not directly connected with CA. Specifically, CA proposes:

17 *4.1.6. Nothing herein shall prohibit CLEC from utilizing third-party*
18 *tandem providers to exchange call traffic with any carrier not directly*
19 *connected to CLEC's network.*

20 AT&T Florida opposes this language, because it is at best unnecessary and at worst
21 unlawful.

22 **Q AS YOU UNDERSTAND IT, WHAT DOES CA MEAN BY A "THIRD-PARTY**
23 **TANDEM PROVIDER"?**

24 A. That is a carrier, other than CA and AT&T Florida, that provides switching and
25 transport services that enable carriers that are not directly interconnected with each
26 other to exchange traffic via the third party tandem provider. In general terms, then,

1 CA is proposing for the ICA to declare that nothing in the ICA prevents CA from
2 making arrangements with such a tandem provider that would permit CA to exchange
3 traffic with other carriers with which CA has no direct interconnection.

4 **Q. WHAT IS IT ABOUT CA'S PROPOSED LANGUAGE THAT IS**
5 **OBJECTIONABLE TO AT&T FLORIDA?**

6 A. The language is vague, and some possible interpretations of the language are contrary
7 to law. The best way for me to explain is to begin with a statement of some basic
8 principles that apply here:

- 9 1. CA is free to send traffic from its network to AT&T Florida through a third
10 party tandem provider if CA chooses to do so.
- 11 2. If CA does send traffic to AT&T Florida through a third party tandem
12 provider, it is exchanging traffic with AT&T Florida by means of *indirect*
13 interconnection. Indirect interconnection is pursuant to section 251(a)(1)
14 of the 1996 Act, and so is not typically addressed in interconnection
15 agreements and is definitely not subject to arbitration under section 252.⁶
- 16 3. CA is also free to designate a third party tandem for carriers that are not
17 directly interconnected with CA to send their traffic to so that the tandem
18 provider can route the traffic to CA. Again, that is *indirect* interconnection
19 between the originating carriers and CA, and so is not a proper subject for
20 the CA/AT&T Florida ICA or this arbitration.
- 21 4. Whether or not CA designates a third party tandem through which carriers
22 can route their traffic to CA, AT&T Florida has the right to send traffic
23 from its network directly to CA via the direct interconnection that is the
24 subject of the ICA the Commission is arbitrating.
- 25 5. Consequently, if CA designates a third party tandem through which carriers
26 can route their traffic to CA, AT&T Florida is not required and cannot
27 lawfully be required to send traffic to CA via that tandem.

⁶ See 47 U.S.C. § 251(c)(1), stating that incumbent LEC is required to negotiate terms and conditions of an agreement to fulfill the duties imposed by 251(b) and 251(c), but not 251(a).

1 **Q. IN LIGHT OF THOSE PRINCIPLES, WHAT IS AT&T FLORIDA'S**
2 **OBJECTION TO CA'S PROPOSED LANGUAGE?**

3 A. As I said, the language is vague. It could be read in a way that is consistent with the
4 above principles, but it could also be read in ways that are not. The language should
5 therefore be excluded from the ICA – or it must be modified to eliminate possible
6 interpretations that would be improper.

7 **Q. HOW COULD CA'S LANGUAGE BE READ IN A WAY THAT IS**
8 **CONSISTENT WITH THE PRINCIPLES YOU STATED ABOVE?**

9 A. If all CA means is that it can send its traffic to AT&T Florida through a third party
10 tandem provider and that carriers with which it is not directly interconnected (which
11 would not include AT&T Florida) can send their traffic to CA through that third party
12 tandem provider if they choose to do so, then AT&T Florida does not disagree with
13 that – though even language that says only that would not properly be included in the
14 ICA.

15 **Q. WHY NOT?**

16 A. In the first place, there is no reason for such language. Nothing in the ICA could
17 possibly be read to prohibit CA from doing those things, so there is no need to say
18 that nothing in the ICA prohibits it. In addition, indirect interconnection, as I stated
19 above, is not a proper subject for an ICA.

20 **Q. HOW COULD CA'S LANGUAGE BE READ TO PRODUCE IMPROPER**
21 **RESULTS?**

22 A. Two possibilities come to mind. First, CA might claim in the future that its language
23 means that once CA arranges for carriers to send their traffic to CA through a third

1 party tandem provider, AT&T Florida can no longer transit to CA traffic that carriers
2 choose to send to CA through AT&T Florida rather than through CA's chosen third
3 party transit provider. That would be unacceptable. If AT&T Florida has an
4 interconnection agreement with Carrier X that allows Carrier X to send its traffic
5 through AT&T Florida to other carriers, then AT&T Florida is going to abide by that
6 contract. Consequently, if Carrier X sends AT&T Florida a call that is destined for
7 CA, AT&T Florida is going to route the call to CA. Language should not be included
8 in the parties' ICA that CA might contend requires AT&T Florida not to route other
9 carriers' traffic to CA.

10 **Q. WHAT IS AT&T FLORIDA'S OTHER CONCERN ABOUT CA'S**
11 **LANGUAGE?**

12 A. This may seem far-fetched, but it is possible that CA might insist that AT&T Florida
13 send *its* traffic to CA through CA's designated third party tandem provider. And that
14 would certainly be improper, because AT&T Florida is entitled to send its traffic to
15 CA through the direct interconnection that will be established between AT&T Florida
16 and CA pursuant to their ICA.

17 **Q. WHY DO YOU SAY IT MAY SEEM FAR-FETCHED THAT CA WOULD**
18 **INSIST ON AT&T FLORIDA SENDING ITS TRAFFIC THROUGH THE**
19 **THIRD PARTY TANDEM PROVIDER?**

20 A. Because CA's proposed language talks about CA using a third party tandem provider
21 to "exchange call traffic with any carrier not directly connected to [CA's] network."
22 That should not include AT&T Florida, which will presumably be directly connected
23 to CA's network pursuant to the ICA the parties are arbitrating. After all, CA is
24 asking the Commission to arbitrate a slew of issues that relate to direct

1 interconnection,⁷ so CA must be intending to directly interconnect with AT&T
2 Florida. Indeed, agreed language on the very first page of the ICA says, “**WHEREAS,**
3 the Parties want to Interconnect their networks at mutually agreed upon Points of
4 Interconnection to provide Telephone Exchange Service and Exchange Access to
5 residential and business End Users over their respective Telephone Exchange Service
6 facilities in the state or states which are subject to this Agreement.” That’s direct
7 interconnection.

8 **Q. IF IT APPEARS CLEAR THAT THE PARTIES’ NETWORKS WILL BE**
9 **DIRECTLY INTERCONNECTED, WHY WORRY ABOUT CA CLAIMING**
10 **THAT ITS LANGUAGE REQUIRES AT&T FLORIDA TO SEND ITS**
11 **TRAFFIC TO CA THROUGH A THIRD PARTY TANDEM PROVIDER?**

12 A. Because I don’t know that the ICA absolutely *requires* CA to establish direct
13 interconnection with AT&T Florida, and because it makes no sense to knowingly
14 include vague language in the ICA that could do mischief in the future.

15 **Q. BUT IF CA IN FACT DOES NOT ESTABLISH DIRECT**
16 **INTERCONNECTION WITH AT&T FLORIDA, CAN’T CA REQUIRE**
17 **THAT AT&T FLORIDA SEND ITS TRAFFIC TO CA THROUGH A THIRD**
18 **PARTY TANDEM PROVIDER OF CA’S CHOOSING?**

19 A. No. AT&T Florida has every right to deliver its traffic to CA directly if it wishes. I
20 discuss this further in connection with Issue 39b below.

21 **Q HOW SHOULD THE COMMISSION RULE ON CA’S PROPOSED SECTION**
22 **4.1.6?**

23 A. The Commission should reject CA’s proposed language. To the extent that the
24 language accurately reflects that CA is free to send its traffic to AT&T Florida

⁷ This includes Issues 14a, 14b, 35, 37, 38, 40, 41 and 42.

1 indirectly and to make arrangements with a third party tandem provider that allows
2 other carriers to send their traffic to CA indirectly, there is no need for the language.
3 And to the extent that the language could be read to require AT&T Florida to send its
4 traffic to CA indirectly, or to prohibit AT&T Florida from delivering to CA traffic
5 originated by other carriers and routed to CA through AT&T Florida, the language is
6 unlawful.

7 **Q. YOU STATED EARLIER THAT AN ALTERNATIVE WOULD BE TO**
8 **MODIFY CA'S LANGUAGE SO THAT IT WOULD NOT BE SUSCEPTIBLE**
9 **TO IMPROPER READINGS. CAN YOU GIVE AN EXAMPLE?**

10 A. Yes. AT&T Florida would not object to a version of section 4.1.6 that reads as
11 follows:

12 4.1.6 Nothing herein shall prohibit CA from utilizing third-party
13 tandem providers to send outbound call traffic (*i.e.*, traffic from, rather
14 than to, CA) to any carrier not directly connected to CA's network.

15 **ISSUE 39b: SHOULD THE ICA PROVIDE THAT EITHER PARTY MAY**
16 **DESIGNATE A THIRD PARTY TANDEM AS THE LOCAL HOMING**
17 **TANDEM FOR ITS TERMINATING TRAFFIC BETWEEN THE**
18 **PARTIES' SWITCHES THAT ARE BOTH CONNECTED TO THAT**
19 **TANDEM?**

20 **Affected Contract Provisions: Network Interconnection Att. § 4.3.1**
21

22 **Q. PLEASE EXPLAIN WHAT ISSUE 39b IS ABOUT.**

23 A. It is closely related to 39a. Network Interconnection section 4.3.1 reads as follows,
24 with the first part agreed and the remainder, shown in bold italics, proposed by CA
25 and opposed by AT&T Florida:

26 4.3.1 When CLEC Offers Service in a Local Exchange Area or LATA,
27 the following trunk groups described in this Section 4.3 shall be used to
28 transport traffic between CLEC End Users and AT&T-21STATE End

1 Users. *If a third-party tandem connects the switches operated by both*
2 *parties, then either party shall be entitled to designate such third party*
3 *tandem as the Local Homing Tandem for its terminating traffic*
4 *between the switches which are connected by the third party tandem,*
5 *and neither party shall be obligated to pay the other for tandem*
6 *switching provided by the third party.*

7 **Q. WHAT IS OBJECTIONABLE ABOUT CA’S PROPOSED LANGUAGE?**

8 A. Though the language is ambiguous for a reason I will explain, it appears to allow CA
9 to require AT&T Florida to send traffic to CA via a third party tandem provider even
10 though AT&T Florida is entitled to send the traffic directly to CA.

11 **Q. IN WHAT WAY IS CA’S LANGUAGE VAGUE?**

12 A. Because it says a carrier can designate a third-party tandem as the Local Homing
13 Tandem for “its terminating traffic.” The ICA does not define “terminating traffic,”
14 however, and I have heard people in the industry use that term in two very different
15 ways. When people refer to a carrier’s “terminating traffic,” they sometimes mean
16 traffic that the carrier is terminating (*i.e.*, incoming traffic destined for the carrier’s
17 end user customers) and they sometimes mean exactly the opposite – traffic that the
18 carrier needs to have terminated (*i.e.*, outgoing traffic originated by the carrier’s end
19 user customers that needs to be terminated by another carrier). I believe that CA is
20 using the word in the former sense, so that when CA refers to “its [one of the Parties]
21 terminating traffic,” it means traffic that that Party will terminate to its end user
22 customers. If that is what CA means, its language is contrary to law.

23 **Q. WHY?**

1 A. Because it would require AT&T Florida to route its traffic to CA indirectly, through
2 CA's designated third party tandem provider. CA has no right under the 1996 Act to
3 require AT&T Florida to do that. Section 251(c)(2) of the Act sets forth the ILEC's
4 obligations with respect to interconnection, including 251(c)(2)(B), which requires
5 AT&T Florida to provide CA with interconnection "at any technically feasible point
6 within [AT&T Florida's] network." In addition, for the purpose of the
7 interconnection requirement established by section 251(c)(2), the FCC defined
8 "interconnection" in 47 C.F.R. § 51.5 as the "linking of two networks for the mutual
9 exchange of traffic." AT&T Florida fulfils its interconnection obligations by
10 interconnecting directly with CA, and has no further obligation – and certainly no
11 obligation that is properly addressed in an interconnection agreement – to
12 interconnect indirectly with CA.⁸

13 **Q. IS THERE ANYTHING ELSE WRONG WITH CA'S PROPOSED**
14 **LANGUAGE?**

15 A. Yes. This is a fairly minor point, but CA's language uses the term "Local Homing
16 Tandem." Terms that are capitalized in the ICA are defined terms, but there is no
17 definition for "Local Homing Tandem" in the ICA, and CA does not propose one.
18 Although I think I know what CA means by "Local Homing Tandem," the use of
19 terms with undefined meanings that may be susceptible to differing interpretations
20 should be avoided.

⁸ As I discussed in connection with Issue 39a, indirect interconnection is the subject of section 251(a) of the 1996 Act, and the duties imposed by 251(a) – unlike the duties imposed by 251(b) and 252(c) – are duties that an ILEC has no duty to negotiate for inclusion in an ICA.

1 **Q HOW SHOULD THE COMMISSION DECIDE THIS DISPUTE?**

2 A. The Commission should reject CA's proposed language for Net. Int. section 4.3.1.

3 **Q. IS THERE A VARIANT OF CA'S PROPOSED LANGUAGE THAT IS NOT**
4 **DEFECTIVE IN THE WAYS YOU HAVE DISCUSSED?**

5 A. Yes. Although there is no need for such language, AT&T Florida would have no
6 objection to:

7 4.3.1 When CA Offers Service in a Local Exchange Area or LATA, the
8 following trunk groups described in this Section 4.3 shall be used to
9 transport traffic between CA End Users and AT&T-21STATE End
10 Users. If a third-party tandem connects the switches operated by both
11 Parties, then either Party shall be entitled to transmit traffic from its
12 switch to the other Party's switch via such third-party tandem, and
13 neither Party shall be obligated to pay the other for tandem switching
14 provided by the third party.

15 This retains the agreed first sentence of section 4.3.1; eliminates the ambiguous term
16 "terminating traffic"; eliminates the undefined term "Local Homing Tandem"; clearly
17 and properly allows each Party to deliver its traffic to the other indirectly if it so
18 chooses; and does not improperly require either party to deliver its traffic indirectly to
19 the other.

20 **ISSUE 41: SHOULD THE ICA INCLUDE COMMUNICATION AUTHORITY'S**
21 **LANGUAGE PROVIDING FOR SIP VOICE-OVER-IP TRUNK**
22 **GROUPS?**

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

24 **Q. WHAT ARE "SIP VOICE-OVER-IP TRUNK GROUPS" TO WHICH THIS**
25 **ISSUE REFERS?**

26 A. Trunks are communications pathways from one point to another. The term "SIP
27 Voice-over-IP trunk groups" is used in CA's proposed language that gave rise to this
28 issue. What CA means by that term, I believe, is trunk groups that carry, or that are

1 capable of carrying, traffic in Internet Protocol (“IP”) format, as opposed to Time
2 Division Multiplexing (“TDM”) format, which is the format that has traditionally
3 been used on the public switched telephone network in general and that is currently
4 used on AT&T Florida’s network.

5 **Q. WHAT IS THE DIFFERENCE BETWEEN TDM FORMAT AND IP**
6 **FORMAT?**

7 A. When traffic is in TDM format, it is transported over dedicated circuits using SS7
8 signaling. When traffic is in IP format, in contrast, a given message is not sent over
9 any one circuit. Instead, the signals are divided into packets and each packet is sent
10 over the fastest available route in a packet switched network. The packets are then
11 reassembled at the receiving end.

12 **Q. DOES AT&T FLORIDA EXCHANGE TRAFFIC WITH ANY CARRIER IN IP**
13 **FORMAT?**

14 A. No. AT&T Florida’s network is a TDM network, and AT&T Florida currently
15 exchanges traffic with other carriers, including its affiliates, only in TDM format.
16 Thus, AT&T Florida currently has no IP interconnection with any carrier.

17 **Q. DOES THE 1996 ACT REQUIRE INCUMBENT LECS LIKE AT&T**
18 **FLORIDA TO INTERCONNECT WITH OTHER CARRIERS IN IP**
19 **FORMAT?**

20 A. That is an open question that is currently pending at the FCC.⁹ AT&T Florida
21 maintains that the 1996 Act does not require IP interconnection. Some carriers agree

⁹ In addition to the FCC, the US House of Representatives Energy & Commerce Committee has initiated an inquiry into modernizing the Act. The Committee’s stated purpose: “The primary body of law regulating these industries was passed in 1934 and while updated periodically, it has not been modernized in 17 years. Changes in technology and the rate at

1 with AT&T Florida, and others disagree. Presumably, the FCC will decide the
2 matter. In any event, this Commission need not do so in order to resolve Issue 41.

3 **Q. IS COMMUNICATIONS AUTHORITY PROPOSING THAT THE**
4 **COMMISSION REQUIRE AT&T FLORIDA TO PROVIDE IP**
5 **INTERCONNECTION OR SIP-OVER-IP TRUNK GROUPS WHEN THE**
6 **PARTIES' ICA GOES INTO EFFECT?**

7 A. No.

8 **Q. THEN WHAT IS THE PARTIES' DISAGREEMENT CONCERNING IP**
9 **INTERCONNECTION?**

10 A. CA proposes language for the ICA that states that if AT&T Florida establishes IP
11 interconnection with another carrier in the future, AT&T Florida must provide IP
12 interconnection to CA on the same terms. AT&T Florida opposes CA's proposed
13 language.

14 **Q. DOESN'T CA'S LANGUAGE ACTUALLY SPEAK IN TERMS OF AT&T**
15 **FLORIDA PROVIDING "SIP VOICE-OVER-IP/VOICE USING-IP TRUNK**
16 **GROUPS," RATHER THAN IN TERMS OF AT&T FLORIDA PROVIDING**
17 **"IP INTERCONNECTION"?**

18 A. Yes. I believe, however, based in part on CA's Comments, that CA is basically
19 talking about IP Interconnection, so I will use that less complicated term.

20 **Q. IS IT AT&T FLORIDA'S POSITION THAT CA WOULD HAVE NO RIGHT**
21 **TO OBTAIN IP INTERCONNECTION FROM AT&T FLORIDA IF AT&T**

which they are occurring warrant an examination of whether, and how, communications law can be rationalized to address the 21st century communications landscape. For this reason, the committee initiated an examination of the regulation of the communications industry, and offers this opportunity for comment from all interested parties on the future of the law." See more at: <http://energycommerce.house.gov/commactupdate>.

1 **FLORIDA WERE TO PROVIDE IT TO ANOTHER CARRIER IN THE**
2 **FUTURE?**

3 A. No, that is not AT&T Florida's position. Indeed, the law might give CA that right –
4 depending on the circumstances. Under other circumstances, however, CA would not
5 have that right, as I explain below. Given this uncertainty, the ICA should not
6 anticipate one way or the other whether CA will in the future be entitled to lay claim
7 to rates, terms and conditions for IP interconnection that AT&T Florida may arrive at
8 with another carrier. If it turns out that the law gives CA that right, then CA will be
9 able to invoke its right; it does not need the ICA to say so.

10 In addition, as I also explain below, the particular approach that CA is taking
11 with its proposed language is directly contrary to federal law.

12 **Q. EXACTLY WHAT IS CA PROPOSING?**

13 A. CA proposes the following for section 4.3.11 of the Network Interconnection
14 Attachment to the ICA:

15 *SIP Voice-over-IP/Voice-using-IP Trunk Groups. In the event that*
16 *AT&T-21STATE offers, installs, or provides any interconnection*
17 *trunking using SIP Voice-over-IP or Voice-using-IP to any entity*
18 *including its affiliates, CA shall be entitled to order the same type of*
19 *interconnection trunking in the same areas and under the same terms*
20 *where it has been offered, installed or provided for others under this*
21 *agreement. The parties may mutually agree to complete a contract*
22 *amendment to codify additional terms and conditions, but such an*
23 *amendment shall not be required in order for CA to obtain the service*
24 *under nondiscriminatory terms and pricing. The parties recognize that*
25 *Voice-over-IP connects two network [sic] over the public internet, and*
26 *is not the same as Voice-using IP which connects two networks using*
27 *private non-internet peering. CA shall be entitled to select either of*
28 *these options, to the extent technically feasible or provided to another*
29 *party by AT&T-21STATE. In the case of Voice-using-IP, AT&T-*
30 *21STATE shall provide non-discriminatory access for CA to*
31 *interconnect its packet network to AT&T-21STATE's packet network*

1 *at any technically feasible point chosen by CA for the purpose of*
2 *interconnection only, utilizing technical means to ensure quality of*
3 *service and security.*

4 **Q. YOU SAID THAT UNDER CERTAIN CIRCUMSTANCES, THE LAW**
5 **MIGHT ENTITLE CA TO OBTAIN IP INTERCONNECTION FROM AT&T**
6 **FLORIDA ON THE SAME RATES, TERMS AND CONDITIONS AS AT&T**
7 **FLORIDA MAY ARRIVE AT IN THE FUTURE WITH ANOTHER**
8 **CARRIER. WHAT CIRCUMSTANCES DID YOU HAVE IN MIND?**

9 A. Assume that the FCC rules that section 251(c)(2) of the 1996 Act – the provision that
10 requires interconnection – requires interconnection in IP format, and that AT&T
11 Florida thereafter enters into an ICA with a CLEC that includes rates, terms and
12 conditions for IP interconnection. At the appropriate time, CA could adopt that
13 CLEC’s ICA as its own. By doing so, CA would obtain the rates, terms and
14 conditions for IP interconnection that AT&T Florida agreed to with the other CLEC.

15 **Q. WHY WOULD CA BE PERMITTED TO ADOPT THE OTHER CLEC’S ICA?**

16 A. Section 252(i) of the 1996 Act provides, “A local exchange carrier shall make
17 available any interconnection, service, or network element provided under an
18 agreement approved under this section to which it is a party to any other requesting
19 telecommunications carrier upon the same terms and conditions as those provided in
20 the agreement.” The FCC has interpreted section 252(i) to mean that an incumbent
21 LEC, such as AT&T Florida, must permit a requesting carrier, like CA, to adopt as its
22 own any other carrier’s interconnection agreement that has been approved by the state
23 commission.

24 **Q. IN THE HYPOTHETICAL SCENARIO YOU ARE DESCRIBING, WHERE**
25 **CA WANTS TO ADOPT AN ICA THAT AT&T FLORIDA ENTERS INTO AT**
26 **SOME POINT IN THE FUTURE WITH ANOTHER CLEC, WOULD IT BE**

1 **NECESSARY FOR THE ICA THAT THE PARTIES ARE ARBITRATING**
2 **NOW TO STATE THAT CA HAS THAT RIGHT?**

3 A. No. CA has whatever rights it has under section 252(i), and CA would not need its
4 existing ICA to recite that it has those rights in order for CA to exercise them.

5 **Q. APART FROM ADOPTING ANOTHER CLEC'S ICA, ARE THERE OTHER**
6 **CIRCUMSTANCES IN WHICH CA MIGHT BE ABLE TO OBTAIN RATES,**
7 **TERMS AND CONDITIONS FOR IP INTERCONNECTION FROM AT&T**
8 **FLORIDA?**

9 A. Yes. Again, assume that during the term of the ICA the parties are arbitrating, the
10 FCC rules that section 251(c)(2) requires ILECs to provide IP interconnection.
11 Regardless of what AT&T Florida did with any other CLEC, CA could assert,
12 pursuant to the agreed "Intervening Law" provisions in section 24 of the General
13 Terms and Conditions of the ICA the parties are arbitrating now, that the FCC's
14 ruling is a change of law that entitles CA to amend the ICA to provide for IP
15 interconnection. In this scenario, CA would not necessarily obtain the same rates,
16 terms and conditions for IP Interconnection as another CLEC (though it might).
17 Assuming that the FCC ruling I am hypothesizing qualified as a change of law event
18 under section 24, however, CA would be entitled to rates, terms and conditions for IP
19 interconnection that conform with whatever rules the FCC might establish for IP
20 interconnection.

21 **Q. IN ORDER TO AVAIL ITSELF OF SUCH CHANGE OF LAW RIGHTS IN**
22 **THAT SCENARIO, WOULD CA NEED LANGUAGE ALONG THE LINES**
23 **OF WHAT IT IS PROPOSING FOR NETWORK INTERCONNECTION**
24 **SECTION 4.3.11?**

1 A. No. Again, CA will have whatever change of law rights it has under section 24, and
2 it has no need for an additional provision covering a change of law with respect to IP
3 interconnection in particular.

4 **Q. YOU SAID THERE ARE CIRCUMSTANCES IN WHICH AT&T FLORIDA**
5 **MIGHT PROVIDE IP INTERCONNECTION TO ANOTHER CARRIER BUT**
6 **CA WOULD NOT BE ENTITLED TO ANY SUCH RATES, TERMS OR**
7 **CONDITIONS PURSUANT TO ITS INTERCONNECTION AGREEMENT.**
8 **WHAT WOULD THOSE CIRCUMSTANCES BE?**

9 A. Assume that instead of ruling that section 251(c)(2) requires IP interconnection (as
10 we assumed before), the FCC rules that neither section 251(c)(2) nor any other
11 provision in the 1996 Act requires ILECs to provide IP interconnection. Assume
12 further that after the FCC makes that ruling, AT&T Florida enters into a commercial
13 agreement with a CLEC – and by that I mean a voluntary negotiated agreement not
14 compelled by or subject to sections 251 and 252 of the 1996 Act – that includes rates,
15 terms and conditions for IP interconnection. Certainly, nothing in the 1996 Act or in
16 any FCC regulation implementing the 1996 Act would require AT&T Florida to
17 provide the same rates, terms or conditions to CA, or to any other CLEC.¹⁰ Given
18 this possible scenario, it would obviously be a mistake for the Commission to adopt
19 the language CA is proposing for Issue 54, because that language would require
20 AT&T Florida – purportedly pursuant to the 1996 Act – to do something that the
21 1996 Act indisputably does not require.

¹⁰ If CA asked AT&T Florida for the same rates, terms and conditions and AT&T Florida refused, CA might try to assert some sort of discrimination claim – but any such claim would not arise under the 1996 Act, and so is not a proper consideration here.

1 **Q. PLEASE SUMMARIZE YOUR TESTIMONY ON ISSUE 54 UP TO THIS**
2 **POINT.**

3 A. CA's proposed language would require AT&T Florida to provide IP interconnection
4 to CA on the same rates, terms and conditions as those that AT&T Florida may in the
5 future arrive at with another CLEC. The Commission should reject CA's proposed
6 language. While there are circumstances under which the law would afford CA that
7 right, there is no need for CA's proposed language in order to preserve that right in
8 those circumstances. And CA's proposed language would yield an unlawful result
9 under foreseeable circumstances in which the law would not allow CA to obtain IP
10 Interconnection from AT&T Florida on the same rates, terms and conditions as
11 another CLEC.

12 **Q. IS THERE ANOTHER REASON THAT THE COMMISSION SHOULD**
13 **REJECT CA'S PROPOSED LANGUAGE?**

14 A. Yes. CA's language is directly contrary to federal law.

15 **Q. PLEASE EXPLAIN.**

16 A. As I said, the FCC has interpreted section 252(i) of the 1996 Act to allow a requesting
17 carrier, such as CA, to adopt as its own a state commission-approved interconnection
18 agreement between the ILEC – AT&T Florida in this case – and another CLEC. The
19 FCC has made absolutely clear, however, that a requesting carrier *cannot* adopt only
20 part of an existing ICA. Rather, under the FCC's so-called "All-or-Nothing Rule,"
21 the adopting carrier must take the existing ICA in its entirety.¹¹

¹¹ 47 C.F.R. § 51.809(a) provides in pertinent part, "An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement *in its entirety* to which the incumbent LEC is a party that is approved by a state commission

1 CA's proposed language is directly contrary to the All-or-Nothing Rule,
2 because it would entitle CA to adopt the rates, terms and conditions governing IP
3 interconnection in another agreement while spurning the remaining rates, terms and
4 conditions in that agreement.

5 **Q. WHAT IS THE RATIONALE FOR THE FCC'S ALL-OR-NOTHING RULE?**

6 A. As I understand it, the Rule reflects the fact that when carriers negotiate
7 interconnection agreements, they are free to agree to whatever they like, without
8 regard to the standards set forth in section 251 of the 1996 Act. Thus, for example, an
9 ILEC might agree to give the CLEC something concerning interconnection that goes
10 beyond what the law requires the ILEC to give, in exchange for the CLEC's
11 agreement to forego something concerning resale to which the law says the CLEC is
12 entitled. Because an interconnection agreement may reflect such gives and takes, the
13 FCC concluded that it would not be fair to allow a third party to come along and lay
14 claim to the gives without also accepting the takes.

15 **Q. IN ADDITION TO THE FACT THAT CA'S PROPOSAL WOULD**
16 **UNLAWFULLY PERMIT CA TO ADOPT SOME, BUT NOT ALL,**
17 **PROVISIONS OF ANOTHER AGREEMENT, IS THERE ANYTHING ELSE**
18 **WRONG WITH CA'S PROPOSAL?**

19 A. Yes. CA's proposed language states in part, "*The parties may mutually agree to*
20 *complete a contract amendment to codify additional terms and conditions, but such*

pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement." (Emphasis added.)

1 *an amendment shall not be required in order for CA to obtain the service under*
2 *nondiscriminatory terms and pricing.”*

3 **Q. WHAT’S WRONG WITH THAT?**

4 A. It is contrary to the fundamental principle, which this Commission has recognized,
5 that the parties’ relations with respect to the matters covered by the ICA are governed
6 *solely* by the ICA. If something happens during the term of the ICA that warrants a
7 change in those relations, that change must be reflected in an amendment to the ICA
8 before it goes into effect.

9 **Q. WHEN DID THE COMMISSION RECOGNIZE THAT PRINCIPLE?**

10 A. Docket No. 000649-TP was an interconnection agreement arbitration between MCI
11 and BellSouth. At the time of the arbitration, the FCC’s Rules allowed carriers to
12 exercise their adoption rights under section 252(i) of the 1996 Act by opting into
13 individual provisions of an ICA – the so-called “Pick and Choose Rule,” which the
14 FCC abandoned in favor of the current “All or Nothing Rule” in 2004. One issue in
15 the arbitration was when a price, term or condition that MCI might adopt from
16 another ICA would become effective. MCI contended that the adoption should be
17 effective immediately upon MCI’s election to adopt the term or condition. *See* Order
18 No. PSC-01-0824-FOF-TP (March 30, 2001) at 190. BellSouth, on the other hand,
19 argued that the effective date of the adopted term or condition should be the date an
20 amendment is signed by MCI and BellSouth. *Id.* at 191. The Commission,
21 recognizing the fundamental principle that I noted above and that is directly contrary
22 to CA’s proposed contract language, agreed with BellSouth “that new terms and

1 conditions cannot become effective until incorporated in writing by both [MCI] and
2 BellSouth.” *Id.* at 192. Going a step further, the Commission held that the new terms
3 would become effective only after the Commission approved the amendment – not, as
4 BellSouth was willing to agree, upon execution of the amendment by the parties.

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

6 A. The Commission should reject CA’s proposed language for Network Interconnection
7 Attachment section 4.3.11. The language clearly violates the FCC’s All-or-Nothing
8 Rule, because it would allow CA to adopt the IP interconnection provisions in another
9 ICA (a hypothetical future ICA) without taking the entire ICA. And apart from that,
10 the Commission should not prejudge now whether the law will or will not permit CA
11 to obtain the IP interconnection provisions in some hypothetical agreement that
12 AT&T Florida may or may not arrive at in the future. If the law would allow CA to
13 do so under the particular circumstances at the time, then CA will be able to avail
14 itself of its legal rights, and there is no need for the ICA to preserve CA’s right to do
15 so. If, on the other hand, the law would not allow CA to do so under the particular
16 circumstances at the time, the Commission would err if it imposed ICA language that
17 permitted CA to do so.

18 **Q. HAS THE COMMISSION PREVIOUSLY ADDRESSED A SIMILAR ISSUE?**

19 A. Yes. In an arbitration between Global NAPs (“GNAPs”) and Verizon, Docket No.
20 011666-TP, GNAPs proposed to include in the ICA a provision – in addition to the
21 general change-in-law provision on which the parties agreed – specifically entitling
22 GNAPs to renegotiate the reciprocal compensation provisions in the ICA if the FCC’s

1 then recently-issued *ISP Remand Order* was overturned or modified. (The 2001 *ISP*
2 *Remand Order* addressed intercarrier compensation on ISP-bound traffic, which was
3 a very hot topic at the time.) The Commission rejected GNAPs' proposal, stating

4 We believe there are few industries more dynamic than
5 telecommunications. The possibility of a change in the law affecting
6 any provision of any interconnection agreement is ever present; thus, the
7 general change-in-law provision. It is not apparent to us that the general
8 change-in-law provision is inadequate in the event of a change in the
9 law affecting the ISP issue. Additionally, it would be inconsistent to
10 include a specific provision for ISP issues and not for other issues which
11 may also see change in the foreseeable future.

12 Order No. PSC-03-0805-FOF-TP (July 9, 2003) at 22. Here, too, CA's proposed
13 contract language is unnecessary if AT&T Florida in the future enters into
14 arrangements with another carrier for IP interconnection to which CA is also entitled,
15 because CA will be able to avail itself of its rights – whatever they may be – at the
16 time. *See also*, Order No. PSC-10-0711-FOF-TP (Dec. 3, 2010), issued in an
17 arbitration between Verizon and Bright House Networks, Docket No. 090501-TP, at 9
18 (“Bright House is asking this Commission to address future interconnections without
19 reference to any specific network configuration. Upon review, we are persuaded by
20 Verizon that we should not make decisions at this time regarding such future
21 interconnections Brighthouse has not presented sufficient justification to
22 warrant a ruling on issues that *may* exist at some time in the future.”) (emphasis in
23 original).

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

25 A. Yes.

1

I. INTRODUCTION

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

4 A. Yes.

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

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

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

10 A. Yes. I have the following exhibits:

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

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

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

14

15

II. DISCUSSION OF ISSUES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16
17 **ISSUE 41: SHOULD THE ICA INCLUDE COMMUNICATION AUTHORITY'S**
18 **LANGUAGE PROVIDING FOR SIP VOICE-OVER-IP TRUNK**
19 **GROUPS?**

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

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

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

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

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

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

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

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

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

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

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

1 CA Response: Admitted.¹

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

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

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

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

¹ Exhibit SM-2.

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

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

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

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

7 A. Yes.

1 **BY MR. FRIEDMAN:**

2 Q And do you have a statement for us this
3 morning -- this afternoon?

4 A Yes, I do.

5 Q Please go ahead.

6 A Good afternoon. I talk about a handful of
7 issues in my prefiled testimony, including two issues
8 that have to do with the payment of taxes and surcharges
9 and one issue in which I explain why CA must connect
10 with AT&T Florida's selective routers in those areas
11 where AT&T Florida is the 911 agency's designated
12 service provider.

13 I would, however, like to focus now on
14 another issue, Issue 41. Issue 41 concerns CA's
15 proposal to have the parties' contract say that if in
16 the future AT&T Florida offers, installs, or provides
17 to any other carrier any interconnection trunking that
18 uses Internet protocol, then CA, and I'll quote their
19 language here, quote, shall be entitled to order the
20 same type of interconnection trunking in the same areas
21 and under the same terms where it has been offered,
22 installed, or provided for others, end quote.

23 Now, one problem with CA's proposal is that
24 it's not clear whether interconnection agreements are
25 even supposed to cover IP interconnection. It's AT&T

1 Florida's position that the interconnection requirement
2 in the 1996 act does not cover IP interconnection.
3 We're waiting for an FCC decision on that. And if
4 AT&T's position turns out to be correct, then no
5 interconnection agreement should say anything about IP
6 interconnection. But that is a legal issue that I
7 don't emphasize in my testimony, and there's no need
8 for this Commission to address the legal question
9 because CA's language must be rejected for other
10 reasons.

11 CA's proposal that it be allowed, quote, the
12 same terms as any carrier to which AT&T Florida might
13 provide IP interconnection in the future directly
14 violates the FCC's all-or-nothing rule. The FCC's
15 all-or-nothing rule says that the only way one carrier
16 can adopt provisions that it likes in another carrier's
17 interconnection agreement is by adopting the entire
18 agreement. In other words, the carrier is prohibited
19 from adopting individual pieces of another carrier's
20 agreement.

21 So imagine, for example, that AT&T Florida
22 were to enter into an interconnection agreement in 2016
23 that required AT&T Florida to provide the CLEC with IP
24 trunking. Imagine also that CA or any carrier came to
25 AT&T Florida at that point and said we want the same IP

1 trunking terms that you gave that CLEC. AT&T Florida
2 would have the right to say no. If you want those IP
3 trunking terms, the FCC's all-or-nothing rule says you
4 have to adopt that CLEC's interconnection agreement in
5 its entirety. And if the requesting carrier pursued
6 the matter at this Commission, federal law would
7 require the Commission to agree with AT&T Florida.

8 In its proposed language that is the subject
9 of Issue 41, CA is basically asking this Commission to
10 give CA permission in advance to violate the
11 all-or-nothing rule. Needless to say, the Commission
12 should decline.

13 If AT&T Florida enters into an agreement in
14 2016 that includes terms for IP trunking, the FCC's
15 rule makes it absolutely clear that neither CA nor
16 anyone else could adopt those terms without adopting
17 the entire agreement. The Commission should not
18 authority CA now to do something that would be illegal
19 for CA to do in the future. Thank you.

20 **MR. FRIEDMAN:** Mr. McPhee is available for
21 cross-examination.

22 **COMMISSIONER BRISÉ:** Thank you very much.

23 Mr. Twomey.

24 **EXAMINATION**

25 **BY MR. TWOMEY:**

1 **Q** Good afternoon, Mr. McPhee.

2 **A** Good afternoon.

3 **Q** Let's start with Issue 34 on 911, please.

4 **A** Okay.

5 **Q** And I'd like to start it by making an analogy
6 for illustrative purposes. And as a Bay Area resident, I
7 think you'll appreciate this one.

8 So let's assume you wanted a cup of coffee
9 and a snack, but you know that Pete's coffee is better
10 than Starbucks. So you go get a cup of Pete's coffee,
11 then you go into Starbucks to get some
12 chocolate-covered Graham crackers, but the Starbucks
13 attendant tells you, the cashier says you can't buy
14 those Graham crackers unless you also buy our coffee
15 because we make really good coffee. Would you think
16 that was unreasonable?

17 **A** In that hypothetical, first of all, I can't
18 really reconcile it because it would never happen, but
19 it does seem like a silly proposition the way you've,
20 you've posed it.

21 **Q** Okay. You don't think that it's also a silly
22 proposition that if Communications Authority buys
23 911 service from an entity, that it also needs to buy
24 E911 connectivity to AT&T?

25 **A** Well, it depends where that service is

1 provided and who's providing that 911 connectivity. In
2 the areas where AT&T is the 911 service provider, then
3 it's reasonable for CA to connect directly to AT&T's
4 911 service provider network. But in other situations
5 where there's other carriers providing that service,
6 AT&T believes that CA should go directly to those
7 providers.

8 **Q** So are you suggesting that if Communications
9 Authority chose to use Intrado or Dash911 or one of the
10 911 vendors, that it would both have to pay for the
11 service from those alternative 911 providers and also pay
12 for trunks to AT&T's selective routers?

13 **A** No, that's not what I'm saying. I'm saying
14 where a PSAP has designated AT&T as the 911 service
15 provider, AT&T is providing that service, and it's
16 reasonable for CA to directly connect to that network.
17 Well, CA has proposed using a middleman for that.

18 In other situations where AT&T is not the
19 service provider for a different county or a different
20 PSAP, for example, AT&T does not seek to have CA pass
21 its traffic through AT&T.

22 **Q** So what you're suggesting is that CA should
23 have to purchase service directly unless -- from AT&T
24 unless AT&T wasn't servicing that selective router; is
25 that correct?

1 **A** I am suggesting -- I'm saying that AT&T
2 believes that CA should connect directly to AT&T's
3 network. Whether or not CA purchases the facilities to
4 get to that network from AT&T or provides them on their
5 own is up to CA.

6 **Q** So CA should not be able to just buy on a
7 wholesale -- or not a wholesale, wrong term -- should not
8 be able to buy, say, a state coverage of 911 from an
9 alternate 911 provider like Intrado or Dash911?

10 **A** I'm not aware with an E-provider providing --
11 I think you called it a state service. I do know that
12 PSAPs contract with service providers on a PSAP-by-PSAP
13 basis, and so they do that with different carriers. And
14 in some circumstance they do that with AT&T. And where
15 they do that with AT&T, traffic has to go through AT&T's
16 911 service provider network. And in those situations,
17 AT&T believes the most efficient manner to do that is by
18 passing traffic directly from CA to AT&T's selective
19 routers.

20 **Q** Okay. Are you aware of any statutory
21 regulatory provisions that support that requirement?

22 **A** I'm not aware.

23 **Q** Are you aware of any CLECs currently in AT&T
24 Florida with local interconnection trunks who are
25 operating without any connection to any of AT&T's

1 911 selective router platforms?

2 **A** I am not aware of them, but if there is a CLEC
3 that is operating in a territory that is not an AT&T
4 incumbent territory and is not operating in a PSAP
5 calling area that is serviced by AT&T, then that's a
6 possibility.

7 **Q** But it's also a possibility that there are some
8 CLECs out there in areas that are serviced by AT&T
9 selective routers that are operating without connection
10 to AT&T's selective routers?

11 **A** I didn't quite understand that question. I'm
12 sorry.

13 **Q** Isn't it possible that there are CLECs
14 operating in Florida in areas serviced by AT&T's 911
15 selective routers and they do not have connection to AT&T
16 selective routers today?

17 **A** I am not aware of any carriers operating in
18 that manner.

19 **Q** Okay. So if Communications Authority chose to
20 route all its customers' E911 traffic through an
21 alternative wholesale provider, would the 911 trunks
22 mandated by AT&T's proposed language pass any traffic at
23 all?

24 **A** If you are referring to trunks between CA's
25 switch and the AT&T selective router --

1 **Q** Correct.

2 **A** -- then there would be no traffic on those
3 trunks. And I believe we answered a discovery response
4 that said that we would not require those trunks in such
5 a circumstance.

6 **Q** I'm sorry. Can you repeat that?

7 **A** If you give me a moment.

8 **Q** Sure.

9 **A** We responded to the first set of interrog --
10 Communications Authority's first set of interrogatories
11 to BellSouth Communications in question 83 that says,
12 "Is it AT&T's position that if CA chooses to use an
13 alternate E911 wholesaler, CA must still order and
14 maintain 911 trunks to AT&T's E911 selective routers
15 even though the trunks will never pass any traffic?"
16 Our response is, "No."

17 **Q** So is it your position that -- sorry. I'm
18 confused then. How does AT&T's proposed ICA language
19 support that?

20 **A** It doesn't. That's the end result if CA were
21 to get their language instead of AT&T's language.

22 **Q** Okay. So the answer to the deposition -- I'm
23 sorry -- the interrogatory is only no if Communications
24 Authority's language was accepted.

25 **A** The question in the interrogatory is, I guess,

1 hypothetical because it says CA has chosen to use an
2 alternate provider. In that case, then the answer is
3 no.

4 **Q** Okay. Thanks. So then is it AT&T's position
5 that maintaining unused 911 trunks actually assists with
6 public safety?

7 **A** AT&T's position is that those 911 trunks will
8 be used to pass traffic directly from a CLEC to AT&T's
9 911 service.

10 **Q** Are there any government 911 system operators
11 in Florida that require CLECs to utilize AT&T's 911
12 service?

13 **A** I don't know.

14 **Q** Are you aware there's a current FCC notice of
15 proposed rulemaking regarding 911 reliability provided by
16 ILECs?

17 **A** Generally I know that there are proceedings
18 and activities at the FCC regarding 911.

19 **Q** And I think in the last couple of weeks or so
20 there were some fines issued by the FCC for failures
21 with, I think, CenturyLink's 911 system. Are you aware
22 of that?

23 **A** I'd have to see something to, to be able to
24 speak to that.

25 **Q** Okay. Let's move on to Issue 41. Okay. Isn't

1 it true that Communications Authority hasn't even asked
2 this Commission to make a ruling on whether or not SIP
3 interconnection should be ordered in this proceeding?

4 **A** That's correct.

5 **Q** And you're, and you're familiar with the
6 Michigan PSC case that actually required AT&T to offer it
7 to Sprint?

8 **A** In a general sense.

9 **Q** Okay. Are you familiar with the amendment
10 process for interconnection agreements, how it works?

11 **A** Again, in a general sense.

12 **Q** Okay. Is it your understanding that AT&T can
13 reject an amendment proposed by CA?

14 **A** I presume that they could if it was something
15 that AT&T didn't agree with.

16 **Q** Okay. So if, if Communications Authority found
17 out that AT&T was offering SIP interconnection right now,
18 or later on to somebody like TCG or somebody else, CA
19 would probably go to AT&T and ask. So in effect then,
20 AT&T could be in the position that they're offering IP
21 interconnection to a CLEC but not to CA; is that correct?

22 **A** In your hypothetical that's true. There's
23 various characteristics to that scenario though that
24 need to be qualified.

25 **Q** Okay. Please.

1 **A** If it's a commercial agreement, it would, it
2 would be not subject to a 251, 252 interconnection
3 agreement. Therefore, there's no reason for it to be
4 included in a filed agreement. It could be perhaps
5 pursuant to some pending change of law event that
6 occurs. And if that were the case, then CA could
7 exercise its currently agreed upon change of law
8 provisions in the contract to negotiate and put those
9 terms that the law allows for into the contract.

10 **Q** So in that case what you're suggesting is in
11 terms of getting the language into the interconnection
12 agreement, Communications Authority would basically have
13 to wait until there was a specific change in law, then
14 they could seek an amendment; is that true?

15 **A** Well, there's different ways to do it. They
16 could also again, if there's a change of law and if
17 there's a contract out there between AT&T and another
18 CLEC that has incorporated those terms into it, then CA,
19 at the appropriate time during the life of its contract,
20 could MFN into that contract and that would forgo any
21 negotiations.

22 **MR. TWOMEY:** Okay. Short and sweet. I'm
23 done.

24 **COMMISSIONER BRISÉ:** Staff.

25 **MS. TAN:** Thank you.

EXAMINATION**BY MS. TAN:****Q** Good afternoon, Mr. McPhee.**A** Good afternoon.**Q** I'd like to hand out an excerpt from your deposition and also your deposition Exhibit No., Exhibit No. 1. And the deposition page is page 11, lines 12 through 18, Bates No. 01821, and the deposition Exhibit No. 1 has the Bates Nos. of 01837-01856. And if could just refresh yourself with your deposition page, and let me know when you're ready.**A** Okay. Okay.**MR. FRIEDMAN:** Lee Eng, I think we're talking about Issue 33a, is that --**MS. TAN:** Yes. I'm sorry. This is in regards to Issue 33a, and the deposition is Exhibit No. 48.**BY MS. TAN:****Q** Okay. In your deposition you stated that you were not sure what the -- what an indemnification agreement would look like or what it would entail. And then you also stated that AT&T Florida had processes in place where CLECs could submit the appropriate paperwork as authorized by the state that would allow them to gain tax exemption, and that AT&T provided -- and that you provided documentation to that effect in your deposition

1 exhibit. If you could look at Bates No. 01850, which is
2 the indemnification agreement.

3 **A** Okay.

4 **Q** Okay. Are you familiar with this form,
5 Mr. McPhee?

6 **A** I have seen it.

7 **Q** Okay. And is this an AT&T Florida form?

8 **A** I believe it is an AT&T form. It's
9 provided -- it's a form provided by AT&T for all
10 requesting carriers throughout the country.

11 **Q** Okay. And what is your understanding of when
12 and how this form is used?

13 **A** My general understanding is when a new CLEC
14 enters into an agreement, there will be an on boarding
15 process with account managers, and they would -- that
16 process would be to establish their billing and also
17 interconnection and things like that. And at that point
18 in time there would be -- these forms would be either
19 made available or sent to the CLEC for them to review
20 and fill out as they deemed appropriate.

21 **Q** Okay. So if Communications Authority filed the
22 indemnification agreement which is Bates No. 18 -- or
23 01850 with AT&T, would Communications Authority then be
24 able to file its own taxes and not pay AT&T Florida taxes
25 directly?

1 **A** I believe that there are also some
2 state-specific requirements for forms. Bates No. 01837
3 is a Florida Annual Resale Certificate for
4 Communications Services Taxes. I believe that has to be
5 applied for and approved by the State of Florida.

6 And there's another form. It's called the
7 Florida Annual Resale Certificate for Sales Tax, and it
8 is DR-13. And there's a sample of it on Bates No.
9 01846, which happens to be a Department, Florida
10 Department of Revenue brochure on the subject matter.
11 Both of those forms, it's my understanding, would have
12 to be applied for and issued by the State of Florida.

13 **Q** So Florida requires additional forms is what
14 you're saying?

15 **A** That's my understanding, yes.

16 **MS. TAN:** Thank you. Staff has no further
17 questions for Mr. McPhee.

18 **COMMISSIONER BRISÉ:** Thank you very much.

19 Commissioners? Okay. None.

20 So I have one question, maybe two at most.

21 Who is ultimately responsible for completing a
22 911 call?

23 **THE WITNESS:** Well, ultimately responsible, I
24 guess it would be all the parties involved in the call.
25 It would be the, the carrier providing the service to

1 the end user to make sure that they properly get that
2 call to the 911 tandem, and then it would be the 911
3 service provider to ensure that they get that call
4 appropriately looked up and sent to the correct PSAP.

5 **COMMISSIONER BRISÉ:** So when the FCC is going
6 to hand out a fine for noncompletion of a 911 call --
7 let's say CA had a contractual agreement with, with AT&T
8 or Intrado, whomever, ultimately that, the consumer
9 calls 911, they're unable to get through, who gets that
10 fine?

11 **THE WITNESS:** I'm not sure we could make a
12 blanket statement as to who it would be.

13 **COMMISSIONER BRISÉ:** Sure.

14 **THE WITNESS:** It might -- they might research
15 where the point of failure happened in that call stream
16 to see who's responsible for it.

17 **COMMISSIONER BRISÉ:** Okay. All right. Thank
18 you.

19 **MR. FRIEDMAN:** Just a couple of questions on
20 redirect, if I may.

21 **EXAMINATION**

22 **BY MR. FRIEDMAN:**

23 **Q** First, on the same issue Commissioner Brisé was
24 asking about, Issue 34, I think you said in response to a
25 question from Mr. Twomey that it's AT&T's view that if we

1 are dealing with a PSAP for which AT&T is the 911 service
2 provider, in that scenario, AT&T's view is that it is
3 best for Communications Authority to connect directly to
4 the AT&T PSAP rather than with an alternate service
5 provider who would operate as an intermediary. I think
6 you did not say why AT&T thinks that is best. Why does
7 AT&T think that's best?

8 **A** Because when you add in an additional carrier
9 into a call stream, you're adding in additional
10 potential points of failure. So it really comes down to
11 efficiency and expediency to ensure that those calls can
12 get completed to the proper emergency services
13 providers.

14 **Q** Okay. Then that takes us to a question, I
15 think Mr. Twomey's question about the potential for empty
16 911 trunks. If it turns -- if AT&T prevails on this
17 issue so that it turns out that the interconnection
18 agreement does require Communications Authority to
19 connect directly with AT&T's STPs in those areas where
20 AT&T is the 911 provider, then can you think of a smart
21 business reason why Communications Authority would want
22 to contract with an alternate service provider in that,
23 for that same area?

24 **A** No.

25 **Q** Okay. I would like to get clarification on one

1 thing that I think you may have said during the questions
2 that Mr. Twomey was asking about Communications
3 Authority's language that in effect says that if in the
4 future AT&T Florida enters into a contract to provide IP
5 trunking to another carrier, then Communications
6 Authority should be entitled to those same terms.

7 I think you said that one circumstance where
8 there could be such a contract in the future would be
9 if it was a commercial agreement; right?

10 **A** Yes.

11 **Q** And when you say commercial agreement, you mean
12 what?

13 **A** I mean an agreement between two parties that's
14 not subject to the provisions of the Telecommunications
15 Act. It's just simply a business-to-business
16 arrangement.

17 **Q** So, for example, that could happen, let's say
18 maybe two years from now we might find such commercial
19 agreement if one year from now the FCC were to rule that
20 IP interconnection is not a subject for interconnection
21 agreements; right?

22 **A** That's correct. If the capability were to
23 exist at that time, that's correct.

24 **Q** Okay. Now, another scenario that you talked
25 about where we might a couple of years from now find AT&T

1 Florida with an agreement to provide some CLEC with IP
2 trunking would be the scenario where the FCC ruled the
3 other way and said this is required, and then subsequent
4 to that AT&T enters into a complying contract; right?
5 That would be a change of law event?

6 **A** That's correct.

7 **Q** And in that scenario, would Communications
8 Authority be able to get an amendment to its contract to
9 provide for IP trunking?

10 **A** Yes, it would.

11 **Q** And how would it do that?

12 **A** It would contact AT&T and state that there's
13 been a change of law on this issue and they seek to
14 negotiate terms to incorporate that change in law. Then
15 the parties would sit down and they would negotiate
16 terms and conditions for that IP interconnection.

17 **Q** I think another scenario you mentioned was one
18 where AT&T enters into an interconnection agreement, and
19 for this instance we won't worry about why, whether
20 there's a change of law or not, but enters into an
21 interconnection agreement with another CLEC that includes
22 terms for IP trunking, and you mentioned the possibility
23 of Communications Authority adopting as its own that
24 other carrier's agreement pursuant to Section 252(i) of
25 the '96 act; right?

1 **A** Yes.

2 **Q** Now, is that something that Communications
3 Authority would do during the term of its contract or
4 that it could only do after its contract expired?

5 **A** I believe that there are restraints on doing
6 it during the term of their contract such that they
7 would do it when their contract is expired or
8 approaching expiration.

9 **MR. FRIEDMAN:** Okay. Thank you. That's all I
10 have.

11 **COMMISSIONER BRISÉ:** Okay. Thank you very
12 much.

13 We have -- if we could enter exhibits.

14 **MR. FRIEDMAN:** Yes, please. Please enter into
15 the record the three exhibits to Mr. McPhee's testimony,
16 which are Items 21 through 23 on the Comprehensive
17 Exhibit List.

18 **COMMISSIONER BRISÉ:** Okay. We'll enter
19 Exhibit Nos. 21 through 23 if there are no objections.

20 **MR. TWOMEY:** None.

21 **COMMISSIONER BRISÉ:** Okay. So those are
22 entered into the record.

23 (Exhibits 21 through 23 admitted into the
24 record.)

25 Staff, do we have anything to enter into the

1 record?

2 **MS. TAN:** Staff has no exhibits to enter into
3 the record.

4 **COMMISSIONER BRISÉ:** All right. Thank you
5 very much.

6 Okay. With that, thank you for your testimony
7 today.

8 Okay. AT&T please call your next witness.

9 **MR. FRIEDMAN:** AT&T Florida calls Mark
10 Neinast.

11 Whereupon,

12 **MARK NEINAST**

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

15 **EXAMINATION**

16 **BY MR. FRIEDMAN:**

17 **Q** Are you ready to go?

18 **A** Yes, sir.

19 **Q** Please state your name and business address.

20 **A** My name is Mark Neinast. I'm an Associate
21 Director for AT&T technologies organization, and my
22 employer is AT&T Services, Inc.

23 **Q** What's your business address?

24 **A** It is 3300 East Renner Road, Richardson,
25 Texas.

1 Q And you have been put under oath today; right?

2 A That's correct.

3 Q Did you prepare and cause to be filed in this
4 matter the direct testimony of Mark Neinast consisting of
5 15 pages with no --

6 A Yes, I did.

7 Q -- exhibits? Do you have any corrections to
8 that?

9 A No.

10 Q Did you also prepare and cause to be filed the
11 rebuttal testimony of Mark Neinast consisting of five
12 pages with no exhibits?

13 A Yes, I did.

14 Q Any corrections to that?

15 A No.

16 Q If I were to ask you today the same questions
17 that are asked in your direct and rebuttal testimony,
18 would you give the same answers?

19 A Yes.

20 **MR. FRIEDMAN:** We'd move for admission at this
21 time into the record of the direct and rebuttal
22 testimony of Mark Neinast.

23 **COMMISSIONER BRISÉ:** Okay. We will enter
24 Mr. Mark Neinast's direct and rebuttal testimony into
25 the record, seeing no objections.

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MR. TWOMEY: None.

COMMISSIONER BRISÉ: All right.

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Mark Neinast. My business address is 3300 E. Renner Rd., Richardson,
4 Texas 75082.

5 **Q. PLEASE DESCRIBE YOUR JOB RESPONSIBILITIES.**

6 A. My primary responsibility is to represent various AT&T operating companies in the
7 development of network policies, procedures, and plans from a technical and
8 regulatory perspective. I assist in developing corporate strategy associated with 911,
9 interconnection, switching, Signaling System 7 (“SS7”), call-related databases, and
10 emerging technologies such as Internet Protocol (“IP”)-based technologies and
11 services. I am also responsible for representing the company’s network organization
12 in negotiations, arbitrations, and disputes with Competitive Local Exchange Carriers
13 (“CLECs”) and wireless carriers.

14 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
15 **EXPERIENCE.**

16 A. I have a Bachelor of Science degree in Business Administration from the University
17 of Texas at Dallas, with a double major in Management Information Systems and
18 Behavioral Management. I have been employed by AT&T for more than 39 years,
19 primarily in the network organization. This includes seven years in central offices as
20 a technician. I also spent two years as a training instructor for electronic switching
21 systems and four years managing technicians in central offices and a Network
22 Operations Center (“NOC”). I worked as a staff manager for the North Texas
23 Network Operations Division for five years. In that role, I supported NOC functions

1 and managed major switching system projects. Subsequently, as an Area Manager in
2 a NOC Translations Center for more than seven years, I was responsible for
3 managing the switch translations for more than 100 switches. I also managed many
4 other major network projects, including more than 60 analog-digital switching
5 dial-to-dial and 16 analog-digital 911 conversions, as well as the implementation of
6 Local Number Portability (“LNP”) in all of these switching systems.

7 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE STATE PUBLIC UTILITY**
8 **COMMISSIONS?**

9 A. Yes, I have testified before several state public utility commissions on technical and
10 network issues. These proceedings most often involved the arbitration of
11 interconnection agreements (“ICAs”) or disputes regarding claimed breaches of an
12 approved ICA.

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

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

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

17 A. I will discuss AT&T Florida’s positions on arbitration Issues 38, 40 and 46(i).

18 **II. DISCUSSION OF ISSUES**

19 **ISSUE 38: MAY COMMUNICATIONS AUTHORITY DESIGNATE ITS**
20 **COLLOCATION AS THE POI?**

21 **Affected Contract Provision: Network Interconnection Att. § 3.4.4**

22 **Q. WHAT IS THE QUESTION PRESENTED BY ISSUE 38?**

1 A. The question presented by this issue is whether Communications Authority (“CA”)
2 can designate its collocation arrangement at AT&T Florida’s premises as the point of
3 interconnection (“POI”) between the parties’ networks. The question arises in
4 connection with section 3.4.4 in the Network Interconnection Attachment, which
5 reads as follows, with agreed language in normal font and language proposed by CA
6 in bold italics:

7 3.4.4 The Parties recognize that a facility handoff point must be
8 agreed upon to establish the demarcation point for maintenance
9 and provisioning responsibilities for each Party on its side of the
10 POI. ***If the POI is a collocation arrangement within an AT&T***
11 ***Wire Center, then the demarcation point shall be that***
12 ***collocation.***

13 CA’s proposed language contemplates that the collocation arrangement may be the
14 POI. For reasons I will explain, the collocation arrangement cannot be the POI, so
15 CA’s proposed language should be rejected.

16 **Q. BEFORE YOU GIVE THE FULL EXPLANATION, CAN YOU BRIEFLY**
17 **STATE WHY CA CANNOT DESIGNATE THE COLLOCATION**
18 **ARRANGEMENT AS A POINT OF INTERCONNECTION?**

19 A. Simply put, the reason is that the POI must be at a point that is on AT&T Florida’s
20 network, and the collocation arrangement is not a point on AT&T Florida’s network.

21 **Q. WHAT IS THE BASIS FOR YOUR STATEMENT THAT THE POI MUST BE**
22 **ON AT&T FLORIDA’S NETWORK?**

23 A. Section 251(c)(2)(B) of the federal Telecommunications Act of 1996 (“1996 Act”)
24 Act requires that interconnection be “at any technically feasible point ***within the***
25 ***[incumbent] carrier’s network.***” 47 U.S.C. § 251(c)(2)(B) (emphasis added.)
26 Accordingly, the Federal Communications Commission (“FCC”), in the Order

1 promulgating its initial rules implementing the 1996 Act, noted that section 251(c)(2)
2 gives competing carriers the right to deliver traffic terminating on an incumbent
3 ILEC's network at any technically feasible point "*on that network*" (*Local*
4 *Competition Order*,¹ ¶ 209 (emphasis added)), and promulgated 47 C.F.R.
5 § 51.305(a)(2), which requires interconnection "at any technically feasible point
6 *within the incumbent ILEC's network.*" (Emphasis added.) In light of this, it is a
7 fundamental principle of interconnection under the 1996 Act that while the requesting
8 carrier may designate any feasible point on the ILEC's network as the POI, the POI
9 must be on the ILEC's network.

10 **Q. CA'S PROPOSED LANGUAGE FOR SECTION 3.4.4 REFERS TO A**
11 **"COLLOCATION ARRANGEMENT WITHIN AN AT&T WIRE CENTER."**
12 **WHAT DOES THAT MEAN?**

13 A. The 1996 Act requires AT&T Florida to provide for collocation at its premises of
14 equipment necessary for interconnection or access to unbundled network elements.
15 47 U.S.C. § 251(c)(6). Collocation may be "physical" or "virtual." If CA establishes
16 physical collocation with AT&T Florida, CA leases space, typically in a locked cage,
17 in AT&T Florida's central office, or wire center – a building in which AT&T Florida
18 houses its switch(es) and related network equipment.² CA places its equipment
19 within that leased collocation space, and CA's equipment is connected with AT&T

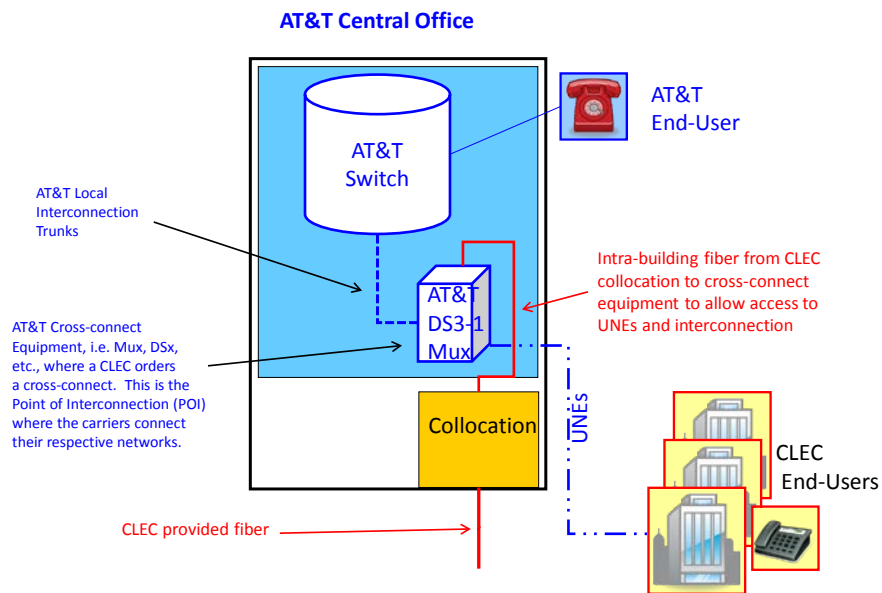
¹ First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*") (subsequent history omitted).

² The ICA defines "Wire Center" as follows, in GT&C section 2.165: "'Wire Center' means the location of one (1) or more local switching systems. It is also a point at which End User's loops within a defined geographic area converge. Such local loops may be served by one (1) or more Central Office Switches within such premises."

1 Florida's equipment in order to establish interconnection or to give CA access to
 2 unbundled network elements of AT&T Florida's network. With this physical
 3 collocation arrangement, CA's personnel have access to the locked cage, and
 4 maintain CA's equipment. Below in Figure 1 is a diagram illustrating a physical
 5 collocation.

6 **FIGURE 1**

Typical Collocation Interconnection



7
 8 If physical collocation is not practical for technical reasons or because of space
 9 limitations in the AT&T Florida wire center, AT&T Florida may instead provide
 10 virtual collocation. In a virtual collocation arrangement, the CLEC equipment is
 11 placed in the ILEC's central office, but the ILEC (rather than the CLEC) installs it,
 12 configures it and maintains it.

1 **Q. IN LIGHT OF WHAT YOU HAVE SAID UP TO THIS POINT, WHY WOULD**
2 **IT BE IMPERMISSIBLE FOR CA TO DESIGNATE A COLLOCATION**
3 **ARRANGEMENT WITHIN AN AT&T FLORIDA WIRE CENTER AS A POI,**
4 **AS CA’S PROPOSED LANGUAGE CONTEMPLATES?**

5 A. In the first place, a “collocation arrangement” is not a location; it is an arrangement.
6 Let’s put that aside, however, and assume that what CA really means – and I believe
7 this is what it does mean – is that the POI will be the location in the AT&T Wire
8 Center where CA is collocated. That location cannot be the POI because it is not
9 “within the incumbent LEC’s network,” which is where FCC Rule 51.305(a)(2)
10 requires the POI to be. In Figure 1, for example, the AT&T Florida switch, the
11 AT&T Florida local interconnection trunks, and the AT&T Florida cross-connect
12 equipment depicted as a DS3-1 Mux are parts of AT&T Florida’s network.³ The
13 Wire Center itself, however – the building – is not part of the network (rather, it
14 houses part of the network), and neither is the floor of the building or the space in the
15 building. In particular, the space in which CA is collocated – the caged area that CA
16 is leasing and in which CA places its equipment – is not part of AT&T Florida’s
17 network. And of course, CA’s equipment is not part of AT&T Florida’s network; it is
18 part of CA’s network. Consequently, FCC Rule 51.305(a)(2) does not allow CA to
19 designate that location as the POI.

20 **Q. IN THE SITUATION DEPICTED IN FIGURE 1, WHERE WOULD THE POI**
21 **BE?**

³ The DS3-1 Mux is only used as a representative piece of equipment, as CA may want to engineer its network to a different piece of equipment, such as a digital cross-connect (DSC) or digital system cross-connect (DSX) panel (for manual jumpers), etc. This is a typical facilities-based CLEC network buildout, where a CLEC such as CA obtains telecommunications equipment in its POP (point of presence), provides facilities from its POP to an AT&T Florida central office, obtains collocation space within an AT&T Florida central office, and installs cabling to distribution frames in order to access services within the AT&T Florida central office.

1 A. It would be at the point where cable running from CA's equipment in its collocation
2 space meets AT&T Florida's network; in other words, at the cross-connect equipment
3 depicted as a cube in the middle of the figure.

4 **Q. WHAT DIFFERENCE DOES IT MAKE WHETHER THE POI IS THERE OR**
5 **IN CA'S LEASED COLLOCATION SPACE, AS CA PROPOSES?**

6 A. The parties agree that each party bears financial responsibility for the equipment on
7 its side of the POI. Because the POI is on the AT&T Florida network, as the FCC's
8 Rule requires, CA must bear the cost of getting to that cross-connect equipment
9 depicted in Figure 1 – the cost of the cable running from the CA equipment in the
10 collocation space to the AT&T Florida cross connect equipment. If the POI were in
11 the CA collocation space, as CA proposes, then AT&T Florida would have to bear the
12 cost of the cable between that space and the AT&T Florida cross-connect equipment.

13 **Q. IN ITS COMMENTS ON THIS ISSUE, CA SUGGESTS THAT SINCE IT IS**
14 **EXTENDING ITS NETWORK ALL THE WAY INTO THE AT&T FLORIDA**
15 **WIRE CENTER, IT IS ONLY FAIR FOR AT&T FLORIDA TO BEAR THE**
16 **COST OF THE CABLE CONNECTING AT&T FLORIDA'S NETWORK TO**
17 **CA'S COLLOCATION.⁴ DO YOU AGREE?**

18 A. No. Much more importantly, though, the controlling FCC Rule makes absolutely
19 clear that the point at which the parties' networks interconnect must be a point
20 "within" AT&T Florida's network – not just a point *near* AT&T Florida's network,
21 like CA's collocation space.

22 **Q. HOW SHOULD THE COMMISSION RULE ON ISSUE 38?**

⁴ 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. The Commission should strike the CA language that shifts the cost of CA's network
2 build-out onto AT&T Florida.

3 **ISSUE 40: SHOULD THE ICA OBLIGATE COMMUNICATIONS AUTHORITY**
4 **TO ESTABLISH A DEDICATED TRUNK GROUP TO CARRY MASS**
5 **CALLING TRAFFIC?**

6 **Affected Contract Provision: Network Interconnection Att. § 4.3.9**

7 **Q. WHAT IS THE DISAGREEMENT THAT IS THE SUBJECT OF ISSUE 40?**

8 A. AT&T Florida proposes language for the interconnection agreement that would
9 require CA to establish trunk groups for mass calling traffic. CA objects to the
10 proposed language.

11 **Q. WHAT IS MASS CALLING TRAFFIC?**

12 A. Mass calling traffic (also called "High Volume Call In" or "HVCI" traffic) is traffic
13 generated by a mass calling event, which is an event that generates an extraordinary
14 volume of traffic to a particular phone number or numbers. Classic examples of mass
15 calling events are a radio station contest in which a listener can participate by calling
16 a certain number at a specified time and call-in voting for a TV show like American
17 Idol.

18 **Q. WHAT NETWORK CONCERN IS RAISED BY A MASS CALLING EVENT?**

19 A. An extraordinary volume of traffic flowing to a single number, or several numbers
20 served by a given end office switch, can overwhelm the network and lead to calls
21 being blocked – including 911 calls. This is a concern of the highest order. As a 911
22 provider, AT&T Florida is responsible for ensuring that no emergency 911 calls are
23 blocked due to avoidable network situations. AT&T Florida cannot run the risk of a

1 mass calling event overwhelming an end office switch and preventing end users from
2 obtaining a dial tone to call 911 or other emergency services.

3 **Q. HAS ANYTHING OF THAT SORT EVER ACTUALLY HAPPENED?**

4 A. Yes. In July 1992, the AT&T network in Oklahoma was overloaded with more than
5 320,000 calls in one hour by fans trying to buy tickets to a Garth Brooks concert.
6 During that time, a man tried to call 911 when his wife started having a heart attack.
7 After a number of attempts resulting in a busy signal, he dialed 0 for the operator, but
8 his wife died before an ambulance could respond.

9 **Q. ARE YOU AWARE OF OTHER EXAMPLES?**

10 A. Yes. On October 16, 2002, there was a significant HVCI event in the AT&T
11 California telephone network. The event was caused by media advertisements that
12 caused the public to initiate calls to purchase World Series tickets. Two AT&T
13 California Access Tandems experienced significant degradation during the event
14 (both switching machines went into “machine congestion”; call register capacity was
15 exceeded; billing records were lost; and control, visibility and diagnostic capability
16 were lost).

17 Also, the Dallas/Fort Worth area experienced a similar “machine congestion”
18 due to a Garth Brooks concert in 1993.

19 **Q. IF THESE EVENTS ARE AS FEW AND FAR BETWEEN AS YOUR**
20 **TESTIMONY SUGGESTS, DOES THE FLORIDA COMMISSION REALLY**
21 **NEED TO BE CONCERNED ABOUT THEM?**

22 A. I believe it does, as AT&T Florida is. While it may not be terribly likely that a mass
23 calling event would result in a network impairment that would impede end users’

1 access to emergency services, it could certainly happen, and the Commission should
2 take reasonable measures to make sure it does not.

3 **Q. WHAT HAS AT&T FLORIDA DONE TO GUARD AGAINST SUCH HARM?**

4 A. AT&T ILECs, including AT&T Florida, have established separate mass calling
5 trunks.

6 **Q. WHAT ARE MASS CALLING TRUNKS?**

7 A. Mass calling trunks (also referred to as choke trunks or high volume call in trunks)
8 limit the number of calls allowed at one time to a particular mass calling number.

9 **Q. ARE SEPARATE MASS CALLING TRUNKS NECESSARY TO ENSURE**
10 **NETWORK RELIABILITY?**

11 A. Yes. There were no mass calling trunks in place at the time of the harmful mass
12 calling events I identified above. If there had been, the problems could not have
13 occurred. Also, I am not aware of a satisfactory alternative solution. (CA has
14 proposed no solution.) There is no denying that a network failure caused by a mass
15 calling event could trigger a delay in access to emergency services in response to an
16 accident, injury, or even a life or death situation. Thus, AT&T believes all carriers
17 should provide adequate mass calling choke trunking for their end users.

18 **Q. DOES AT&T FLORIDA'S USE OF SS7 OBVIATE THE NEED FOR MASS**
19 **CALLING TRUNKS?**

20 A. No, it does not. AT&T Florida's network uses "SS7" or "Signaling System 7."
21 Basically, it is a set of telephony signaling protocols, developed in the mid-1970's,
22 that are used to set up and take down telephone calls. I have seen a CA response to a

1 Staff interrogatory that claims mass calling trunks are a relic of pre-SS7 networks.

2 That is incorrect. If CA were correct, the 1992, 1993 and 2002 events I discussed

3 above would not have occurred, because at the time those events occurred, the AT&T

4 ILECs involved all used SS7.

5 **Q. DID CA MAKE ANY OTHER INCORRECT ASSERTIONS IN ITS**
6 **RESPONSE TO STAFF'S INTERROGATORY ABOUT MASS CALLING**
7 **TRUNKS?**

8 A. Yes. CA's assertions are incorrect in several respects:

9 1. CA contends that if trunks did get choked, that would not be a problem
10 because CA would direct its overflow traffic to long distance trunks. That contention
11 mistakenly assumes that if calls from CA's customers cause the blockage, only CA's
12 customers would be affected. That is not the case. Rather, as in the 2002 episode I
13 described above, the whole network can be affected. Furthermore, if CA were to
14 overflow mass calling to long distance trunks, that would subject the network to
15 further blocked calls, because the choke network is a local network and does not
16 contemplate IXC traffic being pumped into the local area.

17 2. CA stated that mass call-in events are caused by residential customers
18 rather than business customers, and that CLECs typically do not serve large numbers
19 of residential customers. But CA's assertion misses the point. CA does not promise
20 that *it* will not serve large numbers of residential customer, nor is there any guarantee
21 that an adopting carrier would not serve large numbers of residential customers. In
22 any event, employees at a place of business are as likely as anyone else to make calls

1 to radio stations running promotions or to a number where World Series tickets are
2 available.

3 3. CA claims that AT&T Florida is not committing to establish choke
4 trunks to CA, but that is incorrect. AT&T Florida's proposed language for Section
5 4.3.9.3 in the Network Interconnection Attachment states, "If CLEC should acquire a
6 HVCI/Mass Calling customer, (e.g., a radio station) CLEC shall notify AT&T-
7 21STATE at least sixty (60) days in advance of the need to establish a one-way
8 outgoing SS7 or MF trunk group from the AT&T-21STATE HVCI/Mass Calling
9 Serving Office to the CLEC End User's serving office. CLEC will have
10 administrative control for the purpose of issuing ASRs on this one-way trunk group."

11 **Q. PLEASE SUMMARIZE THE CONTRACT LANGUAGE THAT AT&T**
12 **FLORIDA IS PROPOSING FOR MASS CALLING TRUNKS.**

13 A. The language is proposed for Network Interconnection Attachment section 4.3.9 and
14 its subsections. Basically, Subsection 4.3.9.1 requires CA to "establish a dedicated
15 trunk group to the designated Public Response HVCI/Mass Calling Network Access
16 Tandem in each Serving Area." Subsection 4.3.9.2 addresses the sizing of the HVCI
17 trunk group. Subsection 4.3.9.3 provides that if CA acquires a mass calling customer,
18 it must give AT&T Florida appropriate advance notice of the need to establish the
19 associated mass calling trunk group. Finally, subsection 4.3.9.4 provides that if CA

1 issues a new choke telephone number to a mass calling customer,⁵ it must give
2 AT&T Florida appropriate advance notice of deployment of the new number.

3 **Q. HAS CA OBJECTED TO ANY OF THE SPECIFICS OF AT&T FLORIDA'S**
4 **PROPOSED LANGUAGE?**

5 A. To the best of my knowledge, no; CA's objection is to the basic requirement that it be
6 required to establish mass calling trunks. If CA does raise any objections to the
7 specifics of AT&T Florida's proposed language, I will address them in my rebuttal
8 testimony. Otherwise, the Commission should adopt AT&T Florida's language for
9 the reasons I have discussed.

10 **ISSUE 46(i): SHOULD THE ICA INCLUDE LIMITATIONS ON THE**
11 **GEOGRAPHIC PORTABILITY OF TELEPHONE NUMBERS?**

12 **Affected Contract Provision: Local Number Portability Att. § 3.2.1**

13 **Q. WHAT IS AT ISSUE IN LOCAL NUMBER PORTABILITY ATTACHMENT**
14 **SECTION 3.2.1?**

15 A. At issue here is whether a wireline carrier such as CA can port a phone number
16 outside the rate center where the number is assigned in the LERG (Local Exchange
17 Routing Guide). AT&T Florida maintains that the Commission should not permit
18 such geographic number portability.

19 **Q. HAS THE FCC ORDERED THAT GEOGRAPHIC PORTABILITY BE**
20 **PERMITTED?**

⁵ A choke number is a phone number assigned to a mass calling customer. For example, assume the mass calling customer is a radio station that listeners call in hopes of winning a prize by being the ninth caller. The number the listeners are told to call would be a choke number because thousands of calls directed to that number are safely choked down close to their source of origination (at the end office where the customer is dialing from) so that just a few calls get through at any one time.

1 A. No. All of the FCC's orders and recommendations have limited number portability to
2 within rate centers. Even when the FCC ordered wireless number portability, the rate
3 center boundaries were maintained.

4 **Q. WHAT DO YOU BELIEVE IS THE BIGGEST ISSUE WITH GEOGRAPHIC**
5 **PORTABILITY?**

6 A. The most critical factor has to do with intercarrier compensation. Carriers have many
7 billing disputes, particularly with respect to intercarrier compensation, and porting
8 across rate centers would create another opportunity for disputes over call
9 jurisdiction. For example, imagine that CA had a customer in Miami who had ported
10 a Jacksonville number, and that that customer called an AT&T Florida customer in
11 Miami. CA might contend that that was a local call subject to reciprocal
12 compensation, while AT&T Florida's systems would see the call as subject to
13 intrastate access charges. Issues about the rating and routing of traffic have existed
14 since the beginning of telephony, and even though the FCC has ordered that
15 intercarrier compensation will move to bill and keep over the next few years, such
16 issues persist today and most likely will continue to do so for the duration of this
17 contract.

18 **Q. HOW DIFFICULT WOULD IT BE FOR AT&T FLORIDA TO PORT**
19 **CUSTOMERS IN AND OUT OF ITS NETWORK IF RATE CENTERS WERE**
20 **DISREGARDED?**

21 A. It would be very difficult . AT&T Florida has maintained the distinct boundaries for
22 rate centers throughout its footprint and all of its operational support systems
23 ("OSSs") are designed to support porting within the rate center. AT&T Florida does

1 not currently port outside of rate center for any other CLEC. The OSSs that AT&T
2 Florida uses are shared by other AT&T ILEC affiliates, and it would be very
3 expensive to alter those OSSs in a way that would carve out a one-off methodology
4 for CA in Florida.

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

6 **A. Yes.**

1 **I. INTRODUCTION**

2 **Q. ARE YOU THE SAME MARK NEINAST WHO SUBMITTED DIRECT**
3 **TESTIMONY ON BEHALF OF AT&T FLORIDA ON FEBRUARY 16?**

4 A. Yes.

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

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

8 **II. DISCUSSION OF ISSUES**

9 **ISSUE 38: MAY COMMUNICATIONS AUTHORITY DESIGNATE ITS**
10 **COLLOCATION AS THE POI?**

11 **Affected Contract Provision: Network Interconnection Att. § 3.4.4**

12 **Q. IN YOUR DIRECT TESTIMONY, YOU RELIED HEAVILY ON THE FCC**
13 **RULE THAT REQUIRES THE POI TO BE AT A POINT ON AT&T’S**
14 **NETWORK. DOES MR. RAY SAY ANYTHING THAT UNDERCUTS YOUR**
15 **RELIANCE ON THAT RULE?**

16 A. No. In fact, Mr. Ray is unable to cite to any statute, FCC Rule, FCC Order, or other
17 authority that supports CA’s position on Issue 38.

18 **Q. MR. RAY SAYS THAT “THE ACT INTENDED FOR EACH PARTY TO**
19 **BEAR ITS OWN COSTS ON ITS SIDE OF THE POI.” (RAY DIRECT AT P.**
20 **35, LINES 21-22.) DO YOU DISAGREE WITH THAT?**

21 A. No, I do not disagree. As a matter of fact, I stated in my direct testimony that the
22 “parties agree that each party bears financial responsibility for the equipment on its
23 side of the POI.” (Neinast Direct at 7, lines 6-7.) That principle does not support
24 CA’s position on this issue, however, because it does not answer the question where
25 the POI must be located. The FCC has answered that question by ruling that the POI

1 must be on the ILEC's network. And that means it cannot be the "collocation
2 arrangement." as CA's proposed language states, because the "collocation
3 arrangement" is not a location. *Id.* at 6, line 5. And if what CA means is that the
4 POI should be the physical space in which CA is collocated, or CA's equipment
5 within that physical space, that is impermissible because it is inconsistent with the
6 governing FCC Rule. (*Id.* at 6, lines 6-19.)

7 **Q. HOW DO YOU RESPOND TO MR. RAY'S TESTIMONY ABOUT**
8 **SITUATIONS WHERE AT&T FLORIDA HAS SUPPOSEDLY CLAIMED**
9 **THAT THE POI IS SOMEWHERE OTHER THAN WHERE THE PARTIES**
10 **AGREED? (RAY DIRECT AT P. 35, LINE 22 – 36, LINE 4.)**

11 A. I don't know what situations Mr. Ray is talking about, but it really makes no
12 difference. CA should have no misunderstanding about where the POI is going to be
13 under this ICA: It is going to be on AT&T Florida's network just as the FCC requires
14 – not on a piece of CA equipment in a collocation space in proximity to the AT&T
15 Florida network.

16 **Q. DOES THAT MEAN THAT CA IS GOING TO HAVE TO PAY FOR THE**
17 **"CIRCUIT" RUNNING FROM ITS COLLOCATED EQUIPMENT TO THE**
18 **POI ON AT&T FLORIDA'S NETWORK, AS MR. RAY INDICATES? (RAY**
19 **DIRECT AT P. 36, LINES 3-4)**

20 A. Per the FCC's rule, yes.

21 **Q. MR. RAY STATES THAT "CA IS NOT PERMITTED TO PRESENT**
22 **INTERCONNECTION CIRCUITS TO AT&T ANYWHERE ELSE IN THE**
23 **WIRE CENTER OTHER THAN A COLLOCATION. AT&T'S LANGUAGE**
24 **WOULD MAKE IT IMPOSSIBLE FOR CA TO ACTUALLY MEET AT&T**
25 **AT THE POI." (RAY DIRECT AT 36, LINES 9-11) IS THAT CORRECT?**

26 A. No. I don't know where Mr. Ray came up with the idea that it has to interconnect
27 with AT&T Florida in CA's collocation space, but that certainly is not the case.

1 When CLECs collocate with AT&T Florida for the purpose of establishing
2 interconnection, the POI is routinely at the AT&T Florida cross-connect equipment
3 exactly as depicted in Figure 1 on page 5 of my Direct Testimony, and CLECs
4 routinely pay for the intrabuilding fiber that runs from the collocation space to that
5 AT&T Florida equipment.

6 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 38?**

7 A. For the reasons set forth in my direct testimony and above, the Commission should
8 reject the language CA proposes for Network Interconnection section 3.4.4, which
9 would treat a “collocation arrangement” as the POI, because that language is contrary
10 to the FCC Rule that requires the POI to be on AT&T Florida’s network.

11 **ISSUE 40: SHOULD THE ICA OBLIGATE COMMUNICATIONS AUTHORITY**
12 **TO ESTABLISH A DEDICATED TRUNK GROUP TO CARRY MASS**
13 **CALLING TRAFFIC?**

14 **Affected Contract Provision: Network Interconnection Att. § 4.3.9**

15 **Q. IS MR. RAY CORRECT THAT THERE IS NO NEED FOR MASS CALLING**
16 **TRUNKS BECAUSE THE ICA REQUIRES ALL TRUNKS TO USE SS7**
17 **SIGNALING, AND “CHOKE TRUNKS ARE DEPRECATED WITH THE USE**
18 **OF SIGNALING SYSTEM 7” (RAY DIRECT AT P. 37, LINES 13-17)?**

19 A. No. As I stated in my direct testimony (at p.9, lines 3-18 and p. 11, lines 2-4), the
20 harmful mass calling events that I know about from 1992, 1993 and 2002 all involved
21 AT&T ILEC networks that used SS7 but that did not have choke trunks in place.
22 Obviously, those events would not have occurred if the use of SS7 obviated the need
23 for choke trunks, as Mr. Ray claims. Note, too, that Mr. Ray’s testimony does not
24 explain *why* the use of SS7 would obviate the need for choke trunks. Mr. Ray just
25 declares it as if saying it makes it so. I believe, though, that Mr. Ray is thinking that

1 with SS7, interconnection trunks won't get tied up, because if the called number is
2 busy, the call won't be set up, so that trunks can't get choked. If that is what Mr. Ray
3 is thinking, he is mistaken, because while SS7 signaling in some networks can look
4 ahead to determine if the called party line is on-hook or off-hook, AT&T Florida's
5 SS7 does not have that feature; nor, to the best of my knowledge, does the SS7 of any
6 other Regional Bell Operating Company.

7 **Q. MR. RAY ALSO CLAIMS THAT AT&T FLORIDA'S PROPOSAL TO**
8 **REQUIRE MASS CALLING TRUNKS IS DISCRIMINATORY BECAUSE**
9 **AT&T FLORIDA DOES NOT IMPOSE THE SAME REQUIREMENT ON**
10 **ALL CLECS AND CMRS PROVIDERS AND DOES NOT IMPOSE THE**
11 **SAME REQUIREMENT ON ITSELF. (RAY DIRECT AT 37, LINES 17-20.)**
12 **IS THAT TRUE?**

13 A. No. I am not aware of any AT&T Florida ICA that does not require mass calling
14 trunks. It has been the policy and practice of all AT&T ILECs for years to insist on
15 mass calling provisions in their ICAs, and of all the ICAs that I have worked with in
16 recent years, I am not aware of any that do not include such provisions. As for Mr.
17 Ray's assertion that AT&T Florida's proposed language does not require AT&T
18 Florida to order choke trunks to CA, I already demonstrated in my direct testimony
19 that that is wrong. Neinast Direct at 12, lines 3-10.

20 The Commission should require the parties' ICA to include the language
21 AT&T Florida has proposed for Network Interconnection section 4.3.9 that requires
22 choke trunks.

23

1 **ISSUE 46(i): SHOULD THE ICA INCLUDE LIMITATIONS ON THE**
2 **GEOGRAPHIC PORTABILITY OF TELEPHONE NUMBERS?**

3 **Affected Contract Provision: Local Number Portability Att. § 3.2.1**

4 **Q. DO THE FCC'S REGULATIONS FOR NUMBER PORTABILITY ALLOW**
5 **PORTING WITHOUT REGARD TO RATE CENTER, AS MR. RAY**
6 **SUGGESTS (RAY DIRECT AT P. 40, LINES 15-22)?**

7 A. No. As I testified in my direct testimony, at page 14, the FCC has not ordered
8 carriers to port numbers from one rate center to another. In fact, the FCC's consumer
9 site states:

10 Under the Federal Communications Commission's "local number
11 portability" rules, you can switch telephone service providers for
12 wireline, wireless or Voice over Internet Protocol and keep your
13 existing phone number *if you remain in the same geographic area. If*
14 *you are moving from one geographic area to another, however, you*
15 *may not be able to take your number with you.*¹

16 That clearly reflects the FCC's recognition that carriers are not required to port
17 numbers from one rate center (which the FCC refers to as "geographic area" for the
18 benefit of lay readers) to another.

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

20 A. Yes.

¹ <http://www.fcc.gov/cgb/consumerfacts/numbport.html> (emphasis added).

1 **BY MR. FRIEDMAN:**

2 **Q** May we have your -- hear your summary
3 statement, please?

4 **A** Yes. I've only got three issues, but I'm only
5 going to summarize two. And the issues I'm summarizing
6 deal with the point of interconnection and mass calling.

7 The first one, Issue 38, deals with the
8 location of the point of interconnection, or POI. And
9 the POI serves as a demarcation between the two
10 carriers' network and that each party is financially
11 responsible to get to that point of interconnection.

12 The FCC rules require the POI be on AT&T
13 Florida's network, and CA is proposing that the POI be
14 at a place that is not on AT&T Florida's network.
15 They're proposing that the POI be their collocation
16 arrangement. CA's collocation arrangement is not on
17 AT&T's network. They claim that since they're bringing
18 their facilities to our building, that that should be
19 good enough. And a little humor -- close is only good
20 enough for horseshoes and hand grenades, so this is
21 neither of those.

22 My next issue, Number 40, involves mass
23 calling trunks that CA believes are not necessary
24 because CA will be interconnected with us via
25 SS7 signaling and serve business customers that would

1 never call a mass calling number.

2 As I state in my testimony, the reason AT&T
3 Florida believes these trunks are necessary is to
4 protect the Public Switched Telephone Network, or PSTN,
5 from the harm that mass calling events cause. AT&T
6 Florida realizes there's a cost of doing this similar
7 to establishing trunks for access to the 911 network,
8 but time has shown that the establishment of these
9 trunks has protected the PSTN and is well worth the
10 cost. Public safety demands that we guard against that
11 risk. We do that by using mass calling trunks in our
12 network, and all we're saying in Issue 40 is that CA be
13 required to do the same.

14 **MR. FRIEDMAN:** Thank you. Mr. Neinast is
15 available for cross.

16 **COMMISSIONER BRISÉ:** Okay. You may proceed.

17 **EXAMINATION**

18 **BY MR. TWOMEY:**

19 **Q** Good afternoon, Mr. Neinast.

20 **A** Good afternoon.

21 **Q** I'm only going to bother you on one issue.

22 Let's talk about Issue 40 regarding the high
23 capacity choke trunks.

24 **A** Okay.

25 **Q** First, I want to ask, so how long have you

1 worked for AT&T or its affiliates?

2 **A** Well, I have 40 years last Saturday.

3 **Q** Okay. So you've never worked for a CLEC before
4 or any competitive providers?

5 **A** I've represented AT&T's CLEC after the
6 SBC/AT&T merger, so I have represented TCG in matters.

7 **Q** Okay. So do you often communicate -- or do you
8 ever communicate with the CLEC community as a whole
9 regarding the issues raised in Issue 40?

10 **A** I'm not sure I understand what you mean as a
11 whole.

12 **Q** Have you discussed this issue with the CLEC
13 community, not as a whole but at all?

14 **A** Well, I've had discussions with the, what we
15 call legacy AT&T where -- who were CLECs. And I've had
16 discussions, and I've worked in a network operation
17 center where I've actually seen, you know, the activity
18 that these things cause, and was responsible for the
19 installation of the choke network for the Southwestern
20 Bell network where we applied this and it did resolve
21 the issues.

22 **Q** Would you say that choke trunks are for
23 Communications Authority's benefit or AT&T's benefit?

24 **A** I think, I think that it's for the mutual
25 benefit and also mostly for the mutual benefit of the

1 public at large. It's, it's certainly something that
2 nobody wants to spend extra expense on. You know, it's
3 kind of like 911 trunks, you know. Some of the things
4 that carriers do because they should do are costs that
5 are just the cost of doing business.

6 So if you're going to provide service in a
7 community, that service should be on at all times.
8 That's why you have reliability and so forth and
9 standards and such.

10 Q But then isn't it true that AT&T's proposed
11 language essentially gives AT&T the right of protector of
12 the public?

13 A Well, I'm not sure that the characterization
14 is -- I don't, I don't know that they're the protector
15 of the public. I believe that there's an obligation to
16 provide a service that does not allow for disasters to
17 occur. And so, you know, similar is the 911 networks.
18 We have diverse facilities so that one backhoe operator
19 can't wipe out, you know, the entire network. You do
20 things along the lines -- you know, that's why you have
21 backup power, backup battery and so forth. There's
22 reasons that these things have evolved over the last
23 hundred years, and those reasons are not, you know, to
24 be taken lightly.

25 It's not just an AT&T policy. Anywhere you

1 look in the nation there's other carriers. For
2 example, I came from the legacy Southwestern Bell. Low
3 and behold, BellSouth also did choke trunks, so did
4 Ameritech, so does Verizon, US West, Qwest now
5 CenturyLink, all of those carriers have come to the
6 same conclusions. And, in fact, the NANC, which is the
7 North American Numbering Council, compared the two
8 concepts, and back then it was SBC versus AT&T before
9 their merger, of course. And the SBC model, which was
10 to use the choke trunk groups, was voted on by the
11 entire industry as the preferred methodology for
12 preventing mass calling events causing network outages.

13 Q Okay. Under AT&T's proposed language, would
14 the HVCI trunks used be exclusively to connect calls
15 between CA subscribers and AT&T Florida subscribers?

16 A It, it depends. If the radio station or
17 whoever the, the customer that has the mass calling
18 number is an AT&T Florida customer, then the answer
19 would be yes. But if that number is ported -- and when
20 I say ported, we don't use the LNP porting process. It
21 has a special -- it's got a -- it predated the LNP.
22 It's called the interim number portability process. But
23 if the number was ported to another carrier, then no.
24 The answer would be no. That carrier, the call would be
25 routed through that same choke network to that other

1 carrier.

2 Q Okay. Thank you.

3 How many concurrent calls would it take to
4 impair AT&T's switch?

5 A That -- that's -- first of all, that
6 information, I believe, at least my legal counsel and my
7 department has told me that that's confidential and
8 proprietary, and it also involves vendor software and
9 hardware. So if I knew the answer, I don't -- unless
10 ordered by someone, it would be proprietary information.
11 And there -- and I don't believe that there's one
12 number. There's not a magic number in the sky that you
13 could pull out to say that if you hit that number, all,
14 all things fail.

15 Q Would it be safe to say more than 100 per
16 second would be required?

17 A I'm sorry?

18 Q Would it be safe to say that more than
19 100 concurrent calls per second would be required to jam
20 up a switch?

21 A I don't know. I mean, AT&T definitely tries
22 to build a robust network, but --

23 Q The switch would typically, though, handle more
24 than 100 calls a second in a major metropolitan area;
25 wouldn't that be true?

1 **A** It depends on the network. It depends on the
2 switch. There's a, there's a lot of factors that are
3 involved with that, so you can't just throw out a
4 number. And, and because, you know, this involves --
5 there's a similar facet that's called emergency
6 notification systems. We can kind of go there for a
7 moment and I'll kind of explain to you where one of the
8 industry forums, ATIS, defined there's three categories
9 of, of call blocking that occurs. There's
10 telemarketers, which the Federal Trade Commission tries
11 to police, which is almost impossible. There's school
12 districts and folks like that that you notify the
13 general public like that. And the third one and yet to
14 be, thank God, used is potential terrorists or
15 wrongdoers that would try to, you know, congest the
16 network. And so potentially the data that you're asking
17 for, I believe, has, has security ramifications that I
18 don't think should be out into the general public.

19 **Q** Fair enough. So in a modern SS7 environment
20 you've just testified that it's industry standard
21 practice for an ILEC to require a CLEC to use dedicated
22 choke trunk groups to manage mass calling traffic even
23 when the CLEC anticipates no such traffic; is that true?

24 **A** I'm sorry. I didn't hear the last part of
25 your question.

1 **Q** Even -- all right. I'll start over.

2 So in a modern SS7 environment today, not how
3 things were designed in the '80s and pre-Telecom Act,
4 so are you, are you saying that it's still industry
5 standard practice for an ILEC to require a CLEC to use
6 dedicated choke trunk groups to manage mass calling
7 traffic even when the CLEC anticipates no such mass
8 calling traffic?

9 **A** This is almost like the insurance question.
10 Nobody anticipates a fire, yet they do happen and these
11 events occur.

12 And if you're talking about it, would you
13 install them after the event occurred when the damage
14 is already done, or would you install them ahead of
15 time?

16 You know, I'm sure it's very popular in
17 Florida here to have flood insurance, you know, because
18 the damage, the potential for damage is there. And I
19 don't think that -- you know, it's kind of like I said
20 in my deposition, I think you were there, that you
21 can't control the human behavior factor. You know,
22 when the, when the radio station is saying the tenth
23 caller gets prize X, a lot of people would pick up the
24 phone and try to dial that number. I have personally
25 done it myself, and I understand the network and I

1 understand why my call doesn't complete.

2 But I live with the fact that it's designed
3 to prevent that situation from cratering the network.
4 You know, the examples that I cite in my testimony were
5 real. I personally witnessed two of them that were in
6 the southwest region with a Garth Brooks concert, and
7 they used a Ticketmaster that did not use the choke
8 number. He felt terrible. And the one -- the lady in
9 Tulsa did die; that was a real fact. That husband
10 cannot get his wife back. So maybe we should get him
11 to answer that question. I don't know.

12 Q Let me ask you this from a technical
13 perspective. So the AT&T end office switches, they're
14 massive. They're DMS 200, 500, whatever, whatever they
15 are days.

16 A It would be a 100.

17 Q Okay. So they're huge. A CLEC's switch is
18 like a rack this big. Don't you think there should be
19 some sort of differentiation between the requirements for
20 an ILEC versus a CLEC switch who has much limited -- more
21 limited capacity to originate calls?

22 A Well, I'll answer your question in a different
23 way. If, if you look at the size of that DMS100 switch,
24 and it would fill up probably the space between here and
25 that wall over there, the processor that powers that,

1 when it was originally designed in the early 1980s, is
2 not -- it may not be as powerful as what's in your
3 laptop today, and the size and scope of that switch and
4 the capacity of its ability to process is not
5 necessarily mirrored by the size of the elements
6 anymore. Soft switches are much smaller and more
7 powerful than the legacy switch. And, yes, AT&T Florida
8 does use a legacy network. And they're -- you know, one
9 of the reasons, you know, a lot of CLECs would start up,
10 you're going to buy the cheaper soft switch. But, you
11 know, AT&T has a process where it's going to be
12 converting to IP at some time in the future, and there's
13 a lot of research being performed with that now in our
14 laboratories.

15 Q Okay. So are you sure that all ILECs still
16 require CLECs to provide choke --

17 A I don't -- I can't speak for other ILECs.
18 Like I said, I've been with AT&T for 40 years and I know
19 what we do.

20 Q Okay. Other than the industry standard bodies
21 that you've mentioned, are there any other -- are you
22 aware of any other legal or statutory requirements
23 supporting AT&T's position requiring choke trunks?

24 A I'm not aware of any, of any laws that would
25 require that. I'm sure that if an outage were to occur

1 here in Florida, that, you know, caused the Commission
2 to do something or caused the Legislature to do
3 something, they would. But the reason we want these
4 trunks, and they're not -- there's not very many trunks
5 required, and they're mainly only required in the major
6 metropolitan areas. The rural areas are -- we have one
7 DMS switch made to serve in a rural small town and not
8 multiple switches. They're not required where you only
9 have one switch in a town. It's only where you have
10 multiple switches like a Jacksonville or Miami or Tampa
11 Bay -- well, Tampa is not ours -- but, you know, you can
12 go -- you can kind of get the picture of that. It's --

13 Q Okay. Would AT&T's proposed language require
14 Communications Authority to order and pay for choke
15 trunks from the inception of its network without any test
16 of necessity such as, say, like you just said, a rural or
17 urban area?

18 A I believe so. It's almost as if you're going
19 to buy a car. The creditor would actually require you
20 to have full coverage insurance, you know, even though
21 you may have never had a wreck in your life. I don't
22 see it any different than that. It's just a form of
23 insurance.

24 Q Okay. So doesn't the language still require CA
25 to pay for these choke trunks rather than AT&T?

1 **A** Well, there's really no cost to the choke
2 trunks. That's a misnomer. It's the cost of the
3 transport to get to the AT&T network is all we're really
4 talking about.

5 **Q** Okay. It's CA's understanding that the HVCI
6 trunks are considered to be ancillary and thus subject to
7 market prices. Is that not your understanding?

8 **A** They, they have, and there's been some
9 discussion as to whether or not you can use your, your
10 interconnection facilities as such. And that, that's a
11 possibility as well that could be negotiated.

12 **Q** So theoretically then it could be considered
13 part of local interconnection?

14 **A** It could be.

15 **Q** Do all CLECs in Florida right now actually have
16 trunk chokes -- choke trunks in service?

17 **A** No. Not actually, no. Because I believe
18 the -- BellSouth did not require them of other carriers,
19 and that was identified after the AT&T/BellSouth merger.
20 And so the department that I'm in, the AT&T technologies
21 organization, has visited that issue, and that's why I
22 testify on behalf of the networks operations
23 organization. And we believed that that was not in the
24 best interest of AT&T, so that policy was changed
25 around -- I guess it was in 2007. My memory is kind of

1 vague about exactly when that merger occurred, but I
2 believe it was around 2007 is when that policy changed.

3 Q Okay. Do you know whether AT&T's wireless
4 affiliate AT&T Mobility has choke trunks to each AT&T
5 switch?

6 A Yes, absolutely they do.

7 Q Okay. So you've cited in your deposition, I
8 remember, a radio promotion in the San Francisco Bay area
9 when the Giants were playing the Oakland A's. I actually
10 remember that; I was a sophomore in college. A long time
11 ago. Has, has -- have there been any mass calling events
12 involving a CLEC since then?

13 A That one actually occurred because of the
14 wireless carriers, and that segment of the industry did
15 not -- the CLECs in that time had choke trunks, the
16 wireless carriers did not, and it was the wireless
17 carriers that caused that outage. And so once that was
18 identified, we went back and had the wireless carriers
19 install those choke trunks.

20 And, and, you know, most carriers do it. I
21 mean, you know, when you, when you explain the need to
22 it, you know, it's just a matter of you got to put them
23 in to protect the network.

24 Q But still, can you think of any mass calling
25 events that have occurred since the Telecom Act went into

1 effect?

2 **A** Well, that -- the one in the San Francisco Bay
3 area happened in 2002, I believe. So that was after the
4 '96 act. But they, they don't happen that often. One
5 of the bigger problems we have right now are these auto
6 dialers, and we have had outages. I had to do a
7 presentation at the California Commission, and the week
8 before I had to go out there we had one of those
9 carriers cause an outage in our network in Michigan.

10 I've talked to -- the Connecticut legislation
11 had, had required all cities to have those systems
12 there. We no longer have Connecticut property, but
13 still I've had to talk to folks there in Connecticut
14 about those things.

15 **Q** So throughout the testimony I think we've --
16 both sides have agreed that the FCC requires at least
17 one -- at least requires a single point of
18 interconnection in the LATA.

19 **A** That's correct.

20 **Q** Okay. And the ICA also requires one single POI
21 per LATA as well; correct?

22 **A** That's correct. That's correct.

23 **Q** Okay. If CA was required to establish choke
24 trunks to different end offices, wouldn't that
25 essentially be additional points of interconnection?

1 **A** That kind of goes hand in hand with what we
2 were talking about earlier. I think traditionally, yes,
3 it would be because it would be an ancillary service.
4 But the question you had asked earlier was could it be
5 part of the local interconnection trunks, and, yes, it
6 could be. And then there could be a handoff at that POI
7 that could be arranged in that manner.

8 **Q** Could something like that be handled at no cost
9 for a CLEC?

10 **A** I'm sorry. What?

11 **Q** In that situation you described, could that be
12 dealt with by the CLEC at no cost instead of having to
13 put in these choke trunks?

14 **A** Well, you'd have the cost of the transport on
15 your side of the POI for the, for the T1 that those
16 trunks rode. I mean, I hope you're not suggesting that
17 we put a POI on the, on the CLEC's network for that, for
18 your traffic.

19 **Q** No, that wouldn't work.

20 What if the, what if the choke trunks were
21 actually at the POI, then there's no transport?

22 **A** Well, if they were using the local
23 interconnection facilities, that is where they would be.

24 **Q** Okay.

25 **A** Okay. And we would carry it on our side of

1 the POI, just like we do for other interconnection
2 traffic.

3 Q Actually I think that could help and get us
4 past this issue. We can address this later with counsel.

5 One other question. So you said between --
6 so between the Telecom Act and then, and then the
7 acquisition of BellSouth, you said BellSouth ICAs
8 didn't require choke trunks.

9 A That's correct.

10 Q I'm sorry?

11 A That's correct.

12 Q Okay. Are you aware of any mass calling events
13 in BellSouth territory during that time?

14 A No. And I don't have access to the -- to that
15 data, so I, I don't have any knowledge.

16 MR. TWOMEY: Okay. Thanks. No further
17 questions.

18 COMMISSIONER BRISÉ: Thank you.

19 Staff.

20 **EXAMINATION**

21 **BY MS. TAN:**

22 Q Thank you. Good afternoon, Mr. Neinast.

23 A Good afternoon.

24 Q I'd like to talk about Issue 38.

25 A Okay.

1 **Q** And Issue 38 deals with the point at --
2 where the point of interconnection can or should be; is
3 that correct?

4 **A** That's correct.

5 **Q** Okay. And what do you believe is the
6 significance about the point of interconnection?

7 **A** It's, it's where the financial obligations
8 start and end for each carrier. So if, if -- wherever
9 that point is, you know, each carrier is responsible on
10 the opposite side. So it's that line of demarcation for
11 cost and maintenance and all, you know, everything.

12 **Q** And what is AT&T's position on where the point
13 of interconnection should be?

14 **A** Well, it should be on AT&T's network. That's
15 the way that the Telecom Act of '96 states, and the FCC
16 rules follow that law.

17 **Q** Thank you. Are you familiar with Tier 1 and
18 Tier 2 approved installation suppliers?

19 **A** At a, at a general level.

20 **Q** Okay. So if I understand correctly, installers
21 have certain restrictions. And Tier 1 suppliers can go
22 anywhere in the central office, while Tier 2 suppliers
23 are restricted to the CLEC's collocation space; is that
24 correct?

25 **A** That's the way I understand it.

1 **Q** Okay. Is it complicated to become a Tier 2
2 supplier as far as you know?

3 **A** I honestly don't, I don't know that much about
4 the -- I think Ms. Kemp testifies more on that matter.

5 **Q** Okay. Does Communications Authority have
6 physical access to its own collocation space?

7 **A** Yes.

8 **Q** I'd like you to take a look at a portion of the
9 FCC's collocation rules, and that's going to be 47 CFR
10 Section 51.323(d). And I believe everyone else will have
11 a copy of that, but I think you may need a copy of that;
12 is that correct?

13 **A** I would need -- yes, yes, I would need a copy.

14 **Q** And if you could just take a look at that and
15 review it and let me know when you're ready.

16 **A** Okay. Thank you.

17 (Pause.)

18 Okay. I've read through it.

19 **Q** Okay. And if you could please read sections
20 (d) and (d)(1) for me out loud.

21 **A** Okay. "Provide an interconnection point or
22 points physically accessible by both the incumbent LEC
23 and the collocating telecommunications carrier at which
24 the fiberoptic cable carrying an interconnector's
25 circuits can enter the incumbent LEC's premises,

1 provided that the incumbent LEC shall designate the
2 interconnection points as close as reasonably possible
3 to its premises."

4 **Q** Okay. So let's assume that Communications
5 Authority is a Tier 2 installation supplier. Would
6 Communications Authority be able to access AT&T's
7 proposed point of interconnection?

8 **A** No.

9 **Q** Okay.

10 **A** Not as a Tier 2.

11 **Q** And given the restrictions placed on CLECs to
12 remain in their own collocation space as Tier 2
13 suppliers, do you believe that AT&T's proposed point of
14 interconnection is therefore not physically accessible to
15 both the incumbent LEC and the collocating
16 telecommunications carrier?

17 **A** Well, I mean, it's, it's -- they wouldn't be
18 physically accessible to that point of interconnection,
19 no.

20 **Q** And could you explain, is that just due to
21 location of the point of interconnection?

22 **A** Well, the point of interconnection is where
23 that cross-connect occurs, and it's, you know, at least
24 AT&T's position that the cable that comes outside of
25 that collocation cage that makes it accessible to the

1 distribution frame. And, and that distribution frame at
2 that point is, is where all those connections are made
3 to the AT&T equipment, either to the switch that it's
4 interconnecting with or to the unbundled network
5 elements that they're gaining access to.

6 **MS. TAN:** Thank you. Staff has no further
7 questions for Mr. Neinast?

8 **COMMISSIONER BRISÉ:** Commissioners?

9 Okay. Redirect.

10 **MR. FRIEDMAN:** Thank you.

11 **EXAMINATION**

12 **BY MR. FRIEDMAN:**

13 **Q** Mr. Neinast, I want to direct your attention
14 back to the rule that you were just looking at to clear
15 up some very serious confusion that I think we have going
16 on.

17 First of all, does subsection (d)(1) say POI
18 or point of interconnection or does it say
19 interconnection point?

20 **A** It says interconnection point.

21 **Q** Okay. Now, let's talk about the
22 characteristics that this rule says the interconnection
23 point must have. Okay?

24 **A** Okay.

25 **Q** One characteristic it must have is that it's

1 physically accessible by the incumbent LEC and the
2 collocating carrier; correct?

3 **A** That's correct.

4 **Q** Also, am I correct that it says an
5 interconnection point is a point at which the fiberoptic
6 cable carrying an interconnector's circuits can enter the
7 incumbent LEC's premises?

8 **A** That's correct.

9 **Q** What do you understand that to mean? What the
10 heck is that talking about --

11 **A** It's talking --

12 **Q** -- the point at which the collocator's cable
13 enters the premises?

14 **A** That would be outside of the building there is
15 a manhole where the cable comes in through that manhole
16 into a, what's called a cable vault, and it's a conduit
17 that runs at a basement level within a central office
18 building and it runs through that conduit into the
19 building.

20 **Q** And do -- does the incumbent have access to
21 that point of entry into the building?

22 **A** Yes.

23 **Q** Does the collocating carrier also?

24 **A** They would have access to that manhole.

25 **Q** Okay. So is this subsection that we're looking

1 at talking about POIs in the sense of our Issue 38?

2 **A** No.

3 **Q** Okay. That's all I had on that one.

4 And let me just ask you one thing about Issue
5 40. You talked about how up to the time of the
6 BellSouth/Southwestern Bell merger BellSouth did not
7 require competitive LECs to use choke trunks; right?

8 **A** That's correct.

9 **Q** Do you know, did BellSouth itself in its own
10 network have choke trunks?

11 **A** Yes, they did.

12 **Q** Do you know anything about why they didn't
13 require CLECs to do the same?

14 **A** I could not figure that one out.

15 **MR. FRIEDMAN:** Okay. No further questions.
16 Thank you.

17 **COMMISSIONER BRISÉ:** Okay. Anything that we
18 need to enter into the record?

19 **MR. FRIEDMAN:** No exhibits.

20 **COMMISSIONER BRISÉ:** No exhibits. Okay. I
21 don't think we had any exhibits.

22 **MS. TAN:** Staff has no exhibits.

23 **COMMISSIONER BRISÉ:** All right. Thank you. I
24 don't think you had any exhibits either.

25 **MR. TWOMEY:** No.

1 **COMMISSIONER BRISÉ:** Okay. Well, thank you
2 for your testimony today.

3 **THE WITNESS:** Thank you.

4 **COMMISSIONER BRISÉ:** All right. Have a great
5 one.

6 Okay. AT&T, call your next witness.

7 **MR. TWOMEY:** May I make a suggestion --

8 **COMMISSIONER BRISÉ:** Sure.

9 **MR. TWOMEY:** -- aside from almost hurting
10 myself falling out of my chair.

11 Given the progress we've made today, I don't
12 think we're going to finish Ms. Kemp in the next hour.
13 Can we just take care of her testimony tomorrow and
14 probably be done by noon, I would imagine?

15 **COMMISSIONER BRISÉ:** I don't necessarily have
16 an issue with that. As a matter of fact, I was thinking
17 along those lines myself, considering that we are well
18 ahead of my schedule, which is, which is excellent. I
19 love that. So tomorrow morning we'll begin at, like we
20 stated, 8:30, and we'll go to when we're done. All
21 right.

22 Thank you very much, and go and have a great
23 evening.

24 (Hearing concluded at 4:28 p.m.)

25 (Transcript continues in sequence with Volume

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4.)

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.

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LINDA BOLES, CRR, RPR
FPSC Official Hearings Reporter
(850) 413-6734

1 Communications Authority in lieu of AT&T Florida paying
2 the taxes itself?

3 A Now, I believe that's what Communications
4 Authority has attempted to propose is that some
5 undefined form of proof of payment and what AT&T seeks
6 is that they go through the formal process of
7 submitting the forms.

8 Q Okay. Thank you.

9 If Communications Authority files an
10 indemnification agreement, can Communications Authority
11 pay its own taxes and not pay AT&T Florida?

12 A Again, I'm not sure what an indemnification
13 agreement would look like or what it would entail. I'm
14 not a lawyer. But, again, we have set processes in
15 place where they can submit the appropriate paperwork
16 as authorized by the state that would allow them to
17 gain tax exemption, and that's what we seek is that
18 documentation.

19 MR. FRIEDMAN: Since we're at a pause -- and
20 if you don't want this interruption let me know.

21 MS. AMES: No, go ahead.

22 MR. FRIEDMAN: The Notary has attempted to do
23 the email and the one to the reporter didn't work
24 even though I see that it was sent to the address
25 that I find on the Internet,



2015 Florida Annual Resale Certificate for Communications Services Tax

DR-700015
R. 11/14

THIS CERTIFICATE EXPIRES ON DECEMBER 31, 2015

Business Name and Address

Registration Effective Date

Certificate Number

Business Partner Number

[Redacted business information]

By using this resale certificate or its number to make eligible purchases of taxable services exempt from communications services tax, the person or business named above certifies that the taxable services purchased will be resold.

This *Florida Annual Resale Certificate for Communications Service Tax* (Form DR-700015) may be used to make tax-exempt purchases of communications services for resale.

As a **buyer**, use your certificate to purchase services you intend to resell as part of your business. As a **seller**, you must collect communications services tax on sales of taxable services unless the transaction is exempt or a resale certificate is verified or provided by the buyer.

Sellers can verify resale certificates by:

- Phone: Toll-free at 877-357-3725; or
- Online: Go to the Department's website at www.myflorida.com/dor and select "More e-Services" and then "Verify resale and exemption certificates"

As a **seller**, if you obtain an authorization number for each tax-exempt sale, or for all sales to a specific customer, you do not need to keep a copy of the customer's Florida Annual Resale Certificate. For more information, go to the communications services tax page of our website at www.myflorida.com/dor/taxes/cst.html or refer to Rule 12A-19.060, Florida Administrative Code.

Florida law provides for criminal and civil penalties for fraudulent use of a Florida Annual Resale Certificate. If you close or sell your business, notify the Department and destroy this form. An Annual Resale Certificate for Communications Services Tax cannot be used for sales tax purposes.

McPhee Exhibit 1



Communications Services Tax

Communications services tax is comprised of two parts: the Florida communications services tax and the local communications services tax.

What is Taxable?

Communications services include telecommunications, video, direct-to-home satellite, and related services. This definition includes voice, data, audio, video, or any other information or signals transmitted by any medium.

Examples of services subject to the tax include, but are not limited to:

- Local, long distance, and toll telephone
- Voice over Internet Protocol (VoIP) telephone
- Video services (for example, television programming) whether provided by a cable, telephone, or other communications services provider
- Video streaming
- Direct-to-home satellite
- Mobile communications
- Private line services
- Pager and beeper
- Telephone charges made at a hotel or motel
- Facsimiles (fax), when not provided in the course of professional or advertising service
- Telex, telegram, and teletype

Tax Rates

Florida Portion

The Florida portion of the tax includes both state and gross receipts tax. (The gross receipts tax on communications services is imposed under Chapter 203, Florida Statutes [F.S.], but administered under Chapter 202, F.S.). The total tax rate for the Florida portion is 9.17 percent. The rate for the state tax is 6.65 percent. The total rate for the gross receipts tax is 2.52 percent, which is composed of .15 percent and 2.37 percent.

Dealers may bill and collect the 6.65 percent state tax rate along with the .15 percent gross receipts tax rate (a total of 6.8 percent) provided the amounts are properly reflected on the tax return.

Local Portion

Each local taxing jurisdiction (municipality, charter county, or unincorporated county) has a specific local tax rate. To verify current local tax rates, visit the Department of Revenue's (Department) website at www.myflorida.com/dor. A list of all the current and past local jurisdictional rates is on our website. For a list of current local rates only, download the Jurisdiction Rate Table.

Direct-to-home satellite service is taxed at the state rate of 10.8 percent plus 2.37 percent gross receipts tax for a total of 13.17 percent. Local tax does not apply to these services.

What is Exempt?

Dealers should not collect taxes on exempt sales of communications services.

Exempt transactions include:

- Sales for resale
- Sales or purchases of Internet access
- Sales to Federal agencies, the state, any county or municipality, or other political subdivision
- Sales to religious and educational organizations with 501(c)(3), I.R.C. status
- Sales to homes for the aged with 501(c)(3), I.R.C. status and that meet certain provisions

Examples of documentation needed:

Customer	Documentation Needed
Government	Written evidence, per Rule 12A-19.042, Florida Administrative Code
Religious and educational organizations, and homes for the aged with 501(c)(3), I.R.C. status	Written evidence, per Rule 12A-19.043, Florida Administrative Code
Resale	A copy of the customer's <i>Florida Annual Resale Certificate for Communications Services Tax</i> , or a telephone or online transaction or vendor authorization number. See the "Annual Resale Certificate" section for more information.

Partial Exemption for Some Residential Services

Communications services sold to a residential household are exempt from the 6.65 percent state tax and the .15 percent gross receipts tax. Residential service is subject to the 2.37 percent gross receipts tax and local tax. This partial exemption does not apply to the sale of mobile communications service, video service, direct-to-home satellite service, or any residence that constitutes all or part of a transient public lodging establishment as defined in Chapter 509, F.S.

Examples of how tax rates apply to services:

Local, long distance, VoIP, and toll telephone service is taxed at the total Florida rate of 9.17 percent, plus the applicable local tax rate. The 9.17 percent portion is composed of the state rate of 6.65 percent and total gross receipts tax rate of 2.52 percent (.15 percent plus 2.37 percent). However, some services sold to a residential household are exempt from the 6.65 percent state tax and .15 percent gross receipts tax. (See section "Partial Exemption for Some Residential Services.")

Mobile communications and video services are taxed at the total Florida rate of 9.17 percent, plus applicable local tax rate. There is no residential exemption.

Telephone charges made at a hotel or motel and fax services are taxed at the total Florida rate of 9.17 percent, plus applicable local tax rate. There is no residential exemption.

Direct-to-home satellite is taxed at a state rate of 10.8 percent plus 2.37 percent gross receipts tax for a total of 13.17 percent. There is no local tax and no residential exemption.

Informing the Customer

Dealers must itemize and separately state taxes on customer's bills. The taxes must be identified as Florida communications services tax and local communications services tax, respectively.

Who Must Register to Collect Tax?

A business that sells communications services, such as video services, direct-to-home satellite services, or other related services, must register as a dealer for communications services tax. One registration is required for each legal entity, regardless of the number of locations. You can register using our secure website at www.myflorida.com/dor.

Dealers who collect local communications services tax must notify the Florida Department of Revenue of the method they will use to assign addresses to the correct taxing jurisdiction. To notify us of a change in the method you will use to assign addresses, complete Form DR-700020, *Notification of Method Employed to Determine Taxing Jurisdiction*.

Direct Pay Permits – Self-accrual authority may be granted to qualifying entities for one of two purposes:

- We may grant a direct pay permit for interstate communications services when the majority of the communications services used originate outside of Florida and terminate within the state.
- We may grant a direct pay permit for tax due upon determination when the taxable status of sales of communications services will only be known upon use.

To apply for a direct pay permit, complete Form DR-700030, *Application for Self-Accrual Authority/Direct Pay Permit – Communications Services Tax*.

Filing and Paying Taxes

You can electronically file and pay communications services tax using Revenue's secure web application. You can access the web application using your contract object number and business partner number or a Revenue-issued user ID and password. You must enroll in our e-Services program to receive a user ID and password. Enrollment has advantages: you can save your bank account and contact information, view your filing history, and reprint returns. Go to our website to find more information about electronic filing.

Businesses whose communications services tax collections are less than \$20,000 per state fiscal year (July 1 to June 30) may pay and report tax using a paper DR-700016 return. Returns and payments are due on the 1st and late after the 20th day of the month following the collection period. However, we encourage all taxpayers to file and pay electronically.

Businesses whose communications services tax collections are more than \$20,000 in the state's fiscal year (July 1 to June 30) will be required to file and pay electronically in the next calendar year.

Collection Allowances

A dealer using one or more of the qualifying methods to ensure proper address-to-jurisdiction assignment for purposes of collecting local communications services tax will be granted an allowance of .75 percent (.0075) of the total tax due.

The following are qualifying methods:

- Using the Department's address/jurisdiction database to verify the accurate assignment of customer addresses to tax jurisdictions
- Using a database developed by the dealer that has been certified by the Department to verify the accurate assignment of customer addresses to tax jurisdictions
- Using a Department-certified database supplied by a vendor to verify the accurate assignment of customer addresses to tax jurisdictions
- Using ZIP+4 and a methodology to match an address to its taxing jurisdiction when ZIP codes cross jurisdictional lines

If a qualifying method is not used to ensure proper address-to-jurisdiction assignment, a collection allowance of .25 (.0025) percent will be granted.

Direct-to-home satellite service providers receive the .75 (.0075) percent collection allowance.

Address/Jurisdiction Database

The Department's Address/Jurisdiction Database identifies the local taxing jurisdiction for addresses in Florida. The database is based on information provided by local taxing jurisdictions and is updated every six months. Please visit <https://pointmatch.state.fl.us> to access the database.

Examples of how the database can be accessed and used:

- The public can use the address look-up screen to look up an address and verify the communications services tax rates and applicable taxing jurisdictions.
- Communications services tax dealers can download the entire address database, or download by state, county, or jurisdiction.
- Local governments can download the address database by state, county, or jurisdiction. Local governments can also request changes to the database. (User registration is required.)

Certification of Databases

Dealer or vendor databases can be certified for their accuracy of assignment of street addresses to the proper jurisdiction. Dealers or database vendors can request database certification by filing an *Application for Certification of Communications Services Database* (Form DR-700012). For a list of certified vendors, visit our website.

Annual Resale Certificate

Upon initial registration, dealers will be sent a *Florida Annual Resale Certificate for Communications Services Tax* (Form DR-700015) along with their *Certificate of Registration* (Form DR-700014). This annual resale certificate is separate from the one issued for sales and use tax. The resale certificate may be used only to make tax-exempt purchases of communications services that will be resold. Certificates expire on December 31st of each year. Registered, active dealers are issued a new resale certificate annually.

Registered, active dealers who electronically file their tax returns are required to print their own certificate. Dealers who file paper returns will be mailed a new certificate each year in mid-November. All registered, active dealers, regardless of how they file returns, may access their certificate through the file and pay webpage on our website (log in is required). The annual resale certificate may be downloaded and printed or saved. Go to our website and click on the link "Print Annual Resale Certificate" to access the file and pay webpage where you can log in to print your certificate.

Here are some points for selling dealers to remember about accepting a *Florida Annual Resale Certificate for Communications Services Tax*.

- Selling dealers must document all exempt sales for resale. You can document these sales by obtaining a copy of the purchaser's annual resale certificate, or by using the Department's online verification system. You also have the option of calling 877-357-3725 toll-free and selecting communications services tax.
- When a selling dealer obtains a resale certificate, additional sales during the year to the same purchaser do not require a new certificate. If the purchaser buys on account on a continual basis, the selling dealer needs to obtain a certificate valid at the time of purchase, but does not need to obtain a new certificate each year.
- If the purchaser knows their communications services tax certificate/business partner number, the selling dealer can obtain a Transaction Resale Authorization Number online at the time of sale. You also have the option of calling 877-357-3725 toll-free and selecting communications services tax. The Transaction Resale Authorization Number received by phone or online is valid for that transaction only. If a purchaser has already provided a copy of their resale certificate, selling dealers can obtain a unique Vendor Resale Authorization Number by using the online certificate verification system.
- Dealers may upload a batch file of up to 50,000 accounts and receive a Vendor Authorization Number for each the next day. Vendor Authorization Numbers are valid for sales to each purchaser during the calendar year.

For more information, see TIP 07A19- 05.

Use Tax

Consumers who purchase taxable communications services from a seller that does not collect tax must report and pay use tax. Complete Form DR-700019, *Communications Services Use Tax Return*.

For Information and Forms

Information and forms are available on our website at: www.myflorida.com/dor

To speak with a Department of Revenue representative, call Taxpayer Services, Monday through Friday, 8 a.m. to 7 p.m., ET, excluding holidays, at 800-352-3671. For a written reply to tax questions, write to:

Taxpayer Services
Florida Department of Revenue
5050 W Tennessee St
Tallahassee FL 32399-0112

Get the Latest Tax Information

Sign up to get e-mail notices automatically when we post:

- Tax Information Publications (TIPs).
- Proposed rules, notices of rule development workshops, and more.

Sign up at: www.myflorida.com/dor



Florida Annual Resale Certificate for Sales Tax

What's New for 2015 *Florida Annual Resale Certificates for Sales Tax*

- *Florida Annual Resale Certificates for Sales Tax* are available for downloading and printing. You can download or print your certificate as often as you need.
- Signature requirements have been discontinued. The certificate user declares that the items or services being purchased will be resold when the certificate or the certificate number is issued to a seller to make tax-exempt purchases.

Registration

If your business will have taxable transactions, you must register as a sales and use tax dealer before you conduct business in Florida. You can register to collect and report tax through our website. The site will guide you through an application interview that will help you determine your tax obligations. If you do not have Internet access, you can complete a paper *Florida Business Tax Application* (Form DR-1). After your application is approved, you will receive a *Certificate of Registration* (Form DR-11) and a *Florida Annual Resale Certificate for Sales Tax* (Form DR-13).

Note: The information in this brochure applies only to the *Florida Annual Resale Certificate for Sales Tax* ("Annual Resale Certificate"). It does not apply to the *Florida Annual Resale Certificate for Communications Services Tax* (see *Florida's Communications Services Tax* brochure GT-800011).

An *Annual Resale Certificate* will allow you to make tax-exempt purchases or rentals of property or services for resale. Examples are:

- Resale or re-rental as tangible personal property.
- Re-rental as commercial real property.
- Re-rental as transient rental property.
- Resale of services.
- Incorporation into and sale as part of the repair of tangible personal property by a repair dealer.
- Incorporation as a material, ingredient, or component part of tangible personal property that is being produced for sale by manufacturing, compounding, or processing.

When Not to Use your *Annual Resale Certificate*

An *Annual Resale Certificate* may not be used to make tax-exempt purchases or rentals of property or services that will be used:

- But not resold or re-rented.
- Before selling or renting the goods.
- By your business or for personal purposes.

See the chart provided in this publication listing types of businesses and examples of items that you may purchase or rent tax-free. If you have specific questions about your business, visit your nearest service center or call Taxpayer Services.

Annual Resale Certificates expire each year on December 31.

As long as you are a registered dealer and you are conducting business, an *Annual Resale Certificate* will be issued to you each year. Certificates issued to new business locations beginning in mid-October will be issued for the following calendar year.

Each November, *Annual Resale Certificates* for the following calendar year will be available on our website for electronic or paper filers. If you file paper sales and use tax returns, your certificate will also be mailed to you with your annual coupon book or your paper return. Using your tax account information, you may download and print your certificate. Go to www.myflorida.com/dor, select "more e-Services" and then select "Print an Annual Resale Certificate." If you need assistance, contact Taxpayer Services at 800-352-3671.

Inactive Registered Dealers and Use Tax Dealers

Annual Resale Certificates are issued only to dealers who have a valid sales tax account and whose registration status is *active*, which means the business is open for business and collecting and remitting sales tax to the Department of Revenue. A registered dealer who is on *inactive* status or has only a use tax account will not be issued an *Annual Resale Certificate*.

Consolidated Registrations

Purchasers who file returns on a consolidated basis (80-code account numbers) may use a copy of the current *Annual Resale Certificate* for either the consolidated registration number (80-code number) or the active location reported under the consolidated registration number. Selling dealers may accept either copy from the purchaser.

Purchaser's Responsibility

As a purchaser it is your responsibility to ensure that goods purchased using your *Annual Resale Certificate* are purchased for resale. If the goods purchased for resale are later used (not resold), you are responsible for reporting and paying use tax and surtax on the items.

Penalty

There are civil and criminal penalties for intentional misuse of an *Annual Resale Certificate*. Resale fraud is a third-degree felony subject to a 200 percent penalty. Anyone who, for the purpose of evading tax, uses an *Annual Resale Certificate* or signs a written statement claiming an exemption knowing that tax is due on the property or services at the time of purchase is subject to civil and criminal penalties. As part of the audit process, the Department routinely examines resale transactions and *Annual Resale Certificates* to ensure they are legitimate purchases for resale.

Seller's Responsibility

Other businesses may buy goods from you tax-exempt. Business owners who purchase goods for resale must provide you a copy of their current *Annual Resale Certificate*. You should not accept an *Annual Resale Certificate* if you know or have reason to believe that the goods are purchased for reasons other than those stated on the certificate. For example, a resale certificate from a car dealership should not be accepted for the purchase of office supplies or similar items not normally sold by car dealerships.

Selling Dealer Liability

A selling dealer who accepts a copy of an *Annual Resale Certificate* will not be held liable for tax on the transaction if it is later determined the purchaser was not an active, registered dealer at the time of the transaction.

Signature Requirement Discontinued


Beginning with the 2015 *Annual Resale Certificate*, signatures are no longer required on the certificate. The user certifies that the items or services purchased will be resold when the certificate or the certificate number is issued to a seller to purchase items and services tax-exempt.

Type of business	Purchases that may qualify for resale exemption	Purchases that are generally taxable
Restaurants Bars	Disposable "take-out" food containers, paper napkins, plastic eating utensils, and beverages	Dishes, flatware, kitchen utensils, cleaning supplies, office equipment, office supplies, delivery vehicles, kitchen equipment, credit card machines, and menus
Barber shops Beauty salons	Items for resale to customers for off-premises use, including shampoos, hair tonics, brushes, and cosmetics	Items used in serving customers on-site, including shampoo, brushes, cosmetics, cleaning supplies, hair dryers, curling irons, beautician chairs, scissors, combs, shears, office supplies, and office equipment
Car dealers Auto repair shops Service stations	Tires, batteries, auto parts, seat covers, auto paint, antifreeze, nuts, bolts, and oil available for resale to customers or incorporated into repairs	Hand and power tools, machinery, tape, sandpaper, lubricants, solvents, rags, cleaning supplies, office supplies and equipment, free loaner vehicles, delivery vehicles, wreckers, lifts, and diagnostic equipment
Florists Plant nurseries Landscape gardeners	Fertilizers, flowers, shrubs, potting soil, and garden tools for resale to customers on an itemized invoice	Hoses, garden tools, lawn mowers, rakes, office equipment, supplies used in day-to-day operations, and delivery vehicles
Convenience stores	Soft drinks, candy, beer, t-shirts, hats, kitchen supplies, office supplies, household supplies, cleaning supplies, and motor oil available for resale to customers	Cash registers, business equipment, cleaning supplies, office supplies, gas pumps, credit card machines, and ATMs
Pet shops	Items intended for resale rather than use in business operations, including pet food, pet litter, brushes, and pet dishes	Items for use in day-to-day store operations, including pet food, pet litter, pet dishes, cleaning supplies, office supplies, and office equipment
Service providers, for example: attorneys, accountants, architects, doctors, dentists, daycare centers	None. These types of businesses are generally considered to be the end users of products they use in providing service to customers and generally do not qualify for resale exemption.	Electronics, service vehicles, appliances, office equipment and supplies, books, stationery, computer hardware or software, bandages, mouthwash, toothbrushes, toys, and bedding

Documenting Sales for Resale

As a **seller** you must document each tax-exempt sale for resale using one of the following methods. You may select a different method to document each sale for resale.

Method 1 – Obtain a copy of your customer's current *Annual Resale Certificate*. You can accept paper or electronic copies. Maintain copies of the certificates (paper or electronic) for three years.

	2015 Florida Annual Resale Certificate for Sales Tax THIS CERTIFICATE EXPIRES ON DECEMBER 31, 2015	DR-19 R. 10/14
Business Name and Location Address	Certificate Number	
EXAMPLE		
<p>By extending this certificate or the certificate number to a selling agent, the person or business named above, purchases of taxable property or services exempt from sales tax and discretionary sales surtax, the person or business named above, the tax on the property or services purchased or rented will be recited or re-rented for one or more of the following purposes:</p> <ul style="list-style-type: none">• Resale as tangible personal property.• Re-rental as tangible personal property.• Resale of services.• Re-rental as commercial real property.• Incorporation into and sale as part of the tangible personal property by a repair dealer.• Re-rental as transferred rental property.• Incorporation as a material, ingredient, or component part of tangible personal property that is being produced for sale by manufacturing, compounding, or processing. <p>Florida law provides for criminal and civil penalties for fraudulent use of a Florida Annual Resale Certificate.</p>		

Method 2 – For each sale, obtain a transaction authorization number using your customer's *Annual Resale Certificate* number. You do **not** need to maintain a copy of your customer's *Annual Resale Certificate* number when you maintain a transaction authorization number for a tax-exempt sale for resale.

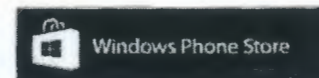
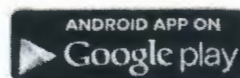
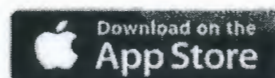
Phone: 877-FL-RESALE (877-357-3725) and enter the customer's *Annual Resale Certificate* number.

Online: Go to www.myflorida.com/dor and select "More e-Services" and then "Verify resale and exemption certificates." Enter sales tax certificate numbers for verification.

FL Tax mobile app available for iPhone, iPad, Android phones and tablets, and Windows Phone.



Find our free app in your device's app store.



- Download the free **FL Tax** mobile app from the app store on your mobile device.
- Enter your 13-digit sales tax certificate number in the Seller field. Your number will be validated each time you verify a customer's certificate number. Once your number is validated, the app can store it for future use.
- Enter your customer's *Annual Resale Certificate* number in the Buyer field.

- A Valid or Not Valid response will be provided immediately. If the buyer's certificate number is valid, you will receive a transaction authorization number. This number is for a single purchase only, and is not valid for any other purchases made by the same customer.
- A verification response report will be stored in the app as long as your device's memory space permits. This report can be emailed for easy record storage. The report displays the following information:
 - Date and time of transaction
 - Buyer's name (when their certificate is valid)
 - Buyer's sales tax or tax exemption certificate number
 - Verification response short-text indicator (Pass or Fail)
 - Response details including transaction authorization number (when valid)

Keep a record of all verification response reports to document your tax-exempt sales.

The telephone system, the online system, and the mobile app will each issue a transaction authorization number or alert the seller that the purchaser does not have a valid resale certificate. The transaction authorization number is valid for that purchase only, and is not valid for other resale purchases made by the same purchaser. As a seller, you must get a new transaction authorization number for each resale transaction.

Method 3 – Each calendar year, obtain annual vendor authorization numbers for your regular customers.

Online: Go to www.myflorida.com/dor and select "More e-Services" and then "Verify resale and exemption certificates." Upload a batch file for customer certificate verification and retrieve that file 24 hours after submission.

You do **not** need to maintain a copy of your customer's *Annual Resale Certificate* when you maintain a vendor transaction authorization number each calendar year for that customer.

Contact Us

Information, forms, and tutorials are available on our website: www.myflorida.com/dor

To speak with a Department representative, call Taxpayer Services, 8 a.m. to 7 p.m., ET, Monday through Friday, excluding holidays, at 800-352-3671.

To find a **taxpayer service center** near you, go to: www.myflorida.com/dor/contact.html

For written replies to tax questions, write to:

Taxpayer Services - MS 3-2000
 Florida Department of Revenue
 5050 W Tennessee St
 Tallahassee FL 32399-0112

Subscribe to our tax publications to receive due date reminders or an email when we post:

- Tax Information Publications (TIPs).
- Proposed rules, notices of rule development workshops, and more.

Go to: www.myflorida.com/dor/llist



Reseller Package

--Instructions--

1. Complete the Reseller Worksheet
2. Complete, Sign and Date the Indemnification Agreement.
3. Complete the Multijurisdiction Tax Certificate (Please be sure to include all State Registration, Seller's Permit, or Tax ID numbers on the form as required), Sign and Date the form.
4. If you are Reselling in states not listed on the Multijurisdiction Tax Certificate above, please reference the file that is also include in this packet (5_Certificate Requirements Resale 1-20-09.doc) which will assist you in what additional Reseller Tax Certificates you may need.
5. Forward all completed documents to AT&T via email at :
taxexemp@att.com

Or Fax: 1-888-354-3832 (Cover sheet must be included, with contact information, for proper processing). All inquiries will be routed back to the provided contact. If no contact information is provided, the package will not be processed.



Reseller Worksheet

COMPANY NAME (if DBA, list legal & DBA)				Federal Employer Identification #			
COMPANY ADDRESS				Federal Universal Service Fund Filer ID #			
CONTACT PERSON		NAME		EMAIL		PHONE	
TYPE OF PURCHASE (Check all that apply)		VOICE ONLY		DATA ONLY		VOICE & DATA	
SERVICE TYPE (Check all that apply)		PREPAID		POSTPAID		OTHER (EXPLAIN)	
REQUESTED TAX EXEMPTION CLASSIFICATION		RESALE		OTHER (EXPLAIN)			
STATES SERVICE RESOLD IN / EQUIPMENT SHIPPED TO: (Check all that apply)		ALABAMA		LOUISIANA		RHODE ISLAND	
		ALASKA		MICHIGAN		SOUTH CAROLINA	
		ARIZONA		MINNESOTA		Tennessee	
		ARKANSAS		MISSISSIPPI		TEXAS	
		CALIFORNIA		MISSOURI		UTAH	
		CONNECTICUT		NEBRASKA		VERMONT	
		DELAWARE		NEVADA		VIRGINIA	
		FLORIDA		NEW HAMPSHIRE		WASHINGTON	
		GEORGIA		NEW JERSEY		WEST VIRGINIA	
		HAWAII		NEW MEXICO		WISCONSIN	
		IDAHO		NEW YORK		WYOMING	
		ILLINOIS		NORTH CAROLINA			
		INDIANA		NORTH DAKOTA			
		IOWA		OHIO			
		KANSAS		OKLAHOMA			
		KENTUCKY		OREGON			
		LOUISIANA		PENNSYLVANIA			
		MAINE		RHODE ISLAND			
		MARYLAND		SOUTH CAROLINA			
		MASSACHUSETTS		Tennessee			
		MICHIGAN		TEXAS			
		MINNESOTA		UTAH			
		MISSISSIPPI		VERMONT			
		MISSOURI		VIRGINIA			
		MONTANA		WASHINGTON			
		NEBRASKA		WEST VIRGINIA			
		NEVADA		WISCONSIN			
		NEW HAMPSHIRE		WYOMING			
		NEW JERSEY					
		NEW MEXICO					
		NEW YORK					
		NORTH CAROLINA					
		NORTH DAKOTA					
		OHIO					
		OKLAHOMA					
		OREGON					
		PENNSYLVANIA					
		RHODE ISLAND					
		SOUTH CAROLINA					
		Tennessee					
		TEXAS					
		UTAH					
		VERMONT					
		VIRGINIA					
		WASHINGTON					
		WEST VIRGINIA					
		WISCONSIN					
		WYOMING					
OTHER:							
AT&T ACCOUNT NUMBER(S) (attach addition sheet if needed)							

INDEMNIFICATION AGREEMENT

GROSS RECEIPTS TAX / STATE UNIVERSAL SERVICE FUND / 911 / E911 / PUC SURCHARGES/ TELECOMMUNICATION RELAY SERVICE SURCHARGES

ANY MODIFICATION TO THIS CERTIFICATE RENDERS IT NULL AND VOID

VALID ONLY FOR THE FOLLOWING STATE(S) INCLUDING COUNTY, MUNICIPAL, CITY AND SPECIAL DISTRICTS THEREIN

- [] Alaska [] Idaho4 [] Minnesota7 [] Pennsylvania
[] Arizona1 [] Illinois5 [] Missouri [] Rhode Island
[] California2 [] Indiana [] Nebraska8 [] South Carolina12
[] Colorado [] Iowa [] Nevada9 [] South Dakota
[] Connecticut [] Kansas [] New Hampshire [] Texas13
[] Delaware [] Kentucky6 [] New Mexico [] Utah14
[] District of Columbia [] Louisiana [] New York10 [] Virginia15
[] Florida3 [] Maine [] North Carolina11 [] Washington16
[] Georgia [] Maryland [] Oklahoma [] West Virginia17
[] Hawaii [] Michigan [] Oregon [] Wisconsin

- 1. Includes Transaction Privilege and Telecommunication Service Excise.
2. Includes Teleconnect, ULTS, DEAF, CHCF, and UUT.
3. Includes Communications Services Tax.
4. Includes Telecommunications Service Assistance Surcharge.
5. Includes Municipal Telecommunications Tax and Infrastructure Maintenance Fees.
6. Includes Lifeline Surcharge/TRS/TAP
7. Includes Telecommunication Access for Communication Impaired Persons
8. Includes City Business and Occupation.
9. Includes City Business License.
10. Includes NYS section 183, 184, 184(a), 186(c), Taxes and NYC Utility Excise/Franchise Tax.
11. Includes Privilege Tax on Gross Receipt from Toll Telecommunications Services.
12. Includes City License Tax.
13. Includes TIF, Equalization Surcharge, and Margins Tax.
14. Includes Emergency Service Charge for Poison Control Center, City Resort and City Utility User Tax
15. Includes Local Consumer Utility Tax.
16. Includes City Utility Tax.
17. Includes City Excise Tax.

ISSUED TO SELLER: AT&T

I certify that _____ (name of issuer/buyer)
_____ (address of issuer/ buyer)
_____ (accounts of issuer/ buyer)

Is register to do business in the above States and that services purchased during the period covered by the resale agreement are purchases for resale, whether wholesale or retail, in the normal course of business and will pay the tax to the proper taxing authority.

I further certify that if any telecommunications service so purchased tax-free is used or consumed by issuer as to make it subject to tax, issuer will pay the tax directly to the proper taxing authority when the applicable law so provides or when proper taxing authority informs vendor for added tax billing. This certificate will be considered a part of each order that our company may hereafter give to vendor and shall be valid until canceled by our company in writing or revoked by the state. I further agree to hold harmless, and indemnify, and defend AT&T and its affiliated entities from any claims (asserted or threatened), damages, penalties, interest, expenses, and/or liabilities based on or arising out of the failure to properly collect and/or remit taxes on services ordered hereunder.

I declare under penalties of making false statement that this certificate has been examined by me and to the best of my knowledge and belief, reflect true, correct, and accurate statements.

Authorized Signature _____ Print Name: _____
Title _____ Date: _____

UNIFORM SALES & USE TAX CERTIFICATE—MULTIJURISDICTION

The below-listed states have indicated that this form of certificate is acceptable, subject to the notes on pages 2-4. The issuer and the recipient have the responsibility of determining the proper use of this certificate under applicable laws in each state, as these may change from time to time.

Issued to Seller: AT&T

Address: 11760 US Highway 1, Suite 600, North Palm Beach, FL 33408

I certify that:
 Name of Firm (Buyer): _____
 Address: _____

is engaged as a registered
 Wholesaler
 Retailer
 Manufacturer
 Seller (California)
 Lessor (see notes on pages 2-4)
 Other (Specify) _____

and is registered with the below listed states and cities within which your firm would deliver purchases to us and that any such purchases are for wholesale, resale, ingredients or components of a new product or service¹ to be resold, leased, or rented in the normal course of business. We are in the business of wholesaling, retailing, manufacturing, leasing (renting) the following:

Description of Business: _____

General description of tangible property or taxable services to be purchased from the seller: _____

State	State Registration, Seller's Permit, or ID Number of Purchaser	State	State Registration, Seller's Permit, or ID Number of Purchaser
AL ¹	_____	MO ¹⁶	_____
AR	_____	NE ¹⁷	_____
AZ ²	_____	NV	_____
CA ³	_____	NJ	_____
CO ⁴	_____	NM ^{4,18}	_____
CT ⁵	_____	NC ¹⁹	_____
DC ⁶	_____	ND	_____
FL ⁷	_____	OH ²⁰	_____
GA ⁸	_____	OK ²¹	_____
HI ^{4,9}	_____	PA ²²	_____
ID	_____	RI ²³	_____
IL ^{4,10}	_____	SC	_____
LA	_____	SD ²⁴	_____
KS	_____	TN	_____
KY ¹¹	_____	TX ²⁵	_____
ME ¹²	_____	UT	_____
MD ¹³	_____	VT	_____
MI ¹⁴	_____	WA ²⁶	_____
MN ¹⁵	_____	WI ²⁷	_____

I further certify that if any property or service so purchased tax free is used or consumed by the firm as to make it subject to a Sales or use Tax we will pay the tax due directly to the proper taxing authority when state law so provides or inform the seller for added tax billing. This certificate shall be a part of each order which we may hereafter give to you, unless otherwise specified, and shall be valid until canceled by us in writing or revoked by the city or state.

Under penalties of perjury, I swear or affirm that the information on this form is true and correct as to every material matter.

Authorized Signature: _____
(Owner, Partner or Corporate Officer)

Title: _____

Date: _____

INSTRUCTIONS REGARDING UNIFORM SALES & USE TAX CERTIFICATE

To Seller's Customers:

In order to comply with the majority of state and local sales tax law requirements, the seller must have in its files a properly executed exemption certificate from all of its customers who claim a sales tax exemption. If the seller does not have this certificate, it is obliged to collect the tax for the state in which the property or service is delivered.

If the buyer is entitled to sales tax exemption, the buyer should complete the certificate and send it to the seller at its earliest convenience. If the buyer purchases tax free for a reason for which this form does not provide, the buyer should send the seller its special certificate or statement.

Caution to Seller:

In order for the certificate to be accepted in good faith by the seller, seller must exercise care that the property or service being sold is of a type normally sold wholesale, resold, leased, rented or incorporated as a ingredient or component part of a product manufactured by buyer and then resold in the usual course of its business. A seller failing to exercise due care could be held liable for the sales tax due in some states or cities. Misuse of this certificate by seller, lessee, or the representative thereof may be punishable by fine, imprisonment or loss of right to issue certificate in some states or cities.

Notes:

1. Alabama: Each retailer shall be responsible for determining the validity of a purchaser's claim for exemption.
2. Arizona: This certificate may be used only when making purchases of tangible personal property for resale in the ordinary course of business, and not for any other statutory deduction or exemption. It is valid as a resale certificate only if it contains the purchaser's name, address, signature, and Arizona transaction privilege tax (or other state sales tax) license number, as required by Arizona Revised Statutes § 42-5022, *Burden of proving sales not at retail*.
3. California:
 - A. This certificate is not valid as an exemption certificate. Its use is limited to use as a resale certificate subject to the provisions of Title 18, California Code of Regulations, Section 1668 (Sales and Use Tax Regulation 1668, Resale Certificate).
 - B. By use of this certificate, the purchaser certifies that the property is purchased for resale in the regular course of business in the form of tangible personal property, which includes property incorporated as an ingredient or component part of an item manufactured for resale in the regular course of business.
 - C. When the applicable tax would be sales tax, it is the seller who owes that tax unless the seller takes a timely and valid resale certificate in good faith.
 - D. A valid resale certificate is effective until the issuer revokes the certificate.
4. The state of Colorado, Hawaii, Illinois, and New Mexico do not permit the use of this certificate to claim a resale exemption for the purchase of a taxable service for resale.
5. Connecticut: This certificate is not valid as an exemption certificate. Its use is limited to use as a resale certificate subject to Conn. Gen. State §§12-410(5) and 12-411(14) and an regulations and administrative pronouncements pertaining to resale certificates.
6. District of Columbia: This certificate is not valid as an exemption certificate. It is not valid as a resale certificate unless it contains the purchaser's D.C. sales and use tax registration number.
7. Florida: The Department will allow purchasers to use the Multistate Tax Commission's Uniform Sales and Use Tax Certificate-Multijurisdiction. However, the use of this uniform certificate must be used in conjunction with the telephonic or electronic authorization number method described in paragraph (3)(b) or (c) of rule SUT FAC 12A-1.039.
8. Georgia: the purchaser's state of registration number will be accepted in lieu of Georgia's registration number when the purchaser is located outside Georgia, does not have nexus with Georgia, and the tangible personal property is delivered by drop shipment to the purchaser's customer located in Georgia.

9. Hawaii allows this certificate to be used by the seller to claim a lower general excise tax rate or no general excise tax, rather than the buyer claiming an exemption. The no tax situation occurs when the purchaser of imported goods certifies to the seller, who originally imported the goods into Hawaii, that the purchaser will resell the imported goods at wholesale. If the lower rate or no tax does not in fact apply to the sale, the purchaser is liable to pay the seller the additional tax imposed. See Hawaii Dept. of Taxation Tax Information Release No. 93-5, November 10, 1993, and Tax Information Release No. 98-8, October 30, 1998.
10. Use of this certificate in Illinois is subject to the provisions of 86 Ill. Adm. Code Ch.I, Sec. 130.1405. Illinois does not have an exemption on sales of property for subsequent lease or rental, nor does the use of this certificate for claiming resale purchases of services have any application in Illinois.

The registration number to be supplied next to Illinois on page 1 of this certificate must be the Illinois registration or resale number; no other state's registration number is acceptable.

"Good faith" is not the standard of care to be exercised by a retailer in Illinois. A retailer in Illinois is not required to determine if the purchaser actually intends to resell the item. Instead, a retailer must confirm that the purchaser has a valid registration or resale number at the time of purchase. If a purchaser fails to provide a certificate of resale at the time of sale in Illinois, the seller must charge the purchaser tax.

While there is no statutory requirement that blanket certificates of resale be renewed at certain intervals, blanket certificates should be updated periodically, and no less frequently than every three years.

11. Kentucky:
 1. Kentucky does not permit the use of this certificate to claim a resale exclusion for the purchase of a taxable service.
 2. This certificate is not valid as an exemption certificate. Its use is limited to use as a resale certificate subject to the provisions of Kentucky Revised Statute 139.270 (Good Faith).
 3. The use of this certificate by the purchaser constitutes the issuance of a blanket certificate in accordance with Kentucky Administrative Regulation 103 KAR 31:111.
12. Maine does not have an exemption on sales of property for subsequent lease or rental.
13. Maryland: This certificate is not valid as an exemption certificate. However, vendors may accept resale certificates that bear the exemption number issued to a religious organization. Exemption certifications issued to religious organizations consist of 8 digits, the first two of which are always "29". Maryland registration, exemption and direct pay numbers may be verified on the website of the Comptroller of the Treasury at www.marylandtaxes.com.
14. Michigan: Effective for a period of three years unless a lesser period is mutually agreed to and stated on this certificate. Covers all exempt transfers when accepted by the seller in "good faith" as defined by Michigan statute.
15. Minnesota:
 - A. Does not allow a resale certificate for purchases of taxable services for resale in most situations.
 - B. Allows an exemption for items used only once during production and not used again.
16. Missouri:
 - A. Purchases who improperly purchase property or services sales tax free using this certificate may be required to pay the tax, interest, additions to tax or penalty.
 - B. Even if property is delivered outside Missouri, facts and circumstances may subject it to Missouri tax, contrary to the second sentence of the first paragraph of the above instructions.
17. Nebraska: A blanket certificate is valid 3 years from the date of issuance.
18. New Mexico: For transactions occurring on or after July 1, 1998, New Mexico will accept this certificate in lieu of a New Mexico nontaxable transaction certificate and as evidence of the deductibility of a sale tangible personal property provided:
 - a) this certificate was not issued by the State of New Mexico;
 - b) the buyer is not required to be registered in New Mexico; and
 - c) the buyer is purchasing tangible personal property for resale or incorporations as an ingredient or component part into a manufactured product.

19. North Carolina: This certificate is not valid as an exemption certificate or if signed by a person such as a contractor who intends to use the property. Its use is subject to G.S. 105-164.28 and any administrative rules or directives pertaining to resale certificates.
20. Ohio: A. The buyer must specify which one of the reasons for exemption on the certificate applies. This may be done by circling or underlining the appropriate reason or writing it on the form above the state registration section. Failure to specify the exemption reason will, on audit, result in disallowance of the certificate.
- B. In order to be valid, the buyer must sign and deliver the certificate to the seller before or during the period for filing the return.
21. Oklahoma would allow this certificate in lieu of a copy of the purchaser's sales tax permit as one of the elements of "properly completed documents" which is one of the three requirements which must be met prior to the vendor being relieved of liability. The other two requirements are that the vendor must have the certificate in his possession at the time the sale is made and must accept the documentation in good faith. The specific documentation required under OAC 710-65-7-6 is:
- A) Sales tax permit information may consist of:
- (i) A copy of the purchaser's sales tax permit; or
- (ii) In lieu of a copy of the permit, obtain the following:
- (I) Sales tax permit number; and
- (II) The name and address of the purchaser;
- B) A statement that the purchaser is engaged in the business of reselling the articles purchased;
- C) A statement that the articles purchased are purchased for resale;
- D) The signature of the purchaser or a person authorized to legally bind the purchaser; and
- E) Certification on the face of the invoice, bill or sales slip or on separate letter that said purchaser is engaged in reselling the articles purchased.
- Absent strict compliance with these requirements, Oklahoma holds a seller liable for sales tax due on sales where the claimed exemption is found to be invalid, for whatever reason, unless the Tax Commission determines that purchaser should be pursued for collection of the tax resulting from improper presentation of a certificate.
22. Pennsylvania: This certificate is not valid as an exemption certificate. It is valid as a resale certificate only if it contains the purchaser's Pennsylvania Sales and Use Tax eight-digit license number, subject to the provisions of 61 PA Code §32.3.
23. Rhode Island allows this certificate to be used to claim a resale exemption only when the item will be resold in the same form. They do not permit this certificate to be used to claim any other type of exemption.
24. South Dakota: Services which are purchased by a service provider and delivered to a current customer in conjunction with the services contracted to be provided to the customer are claimed to be for resale. Receipts from the sale of a service for resale by the purchaser are not subject to sales tax if the purchaser furnishes a resale certificate which the seller accepts in good faith. In order for the transaction to be a sale for resale, the following conditions must be present:
- (1) The service is purchased for or on behalf of a current customer;
- (2) The purchaser of the service does not use the service in any manner; and
- (3) The service is delivered or resold to the customer without any alteration or change.
25. Texas: Items purchased for resale must be for resale within the geographical limits of the United States, its territories and possessions.
26. Washington: A. Blanket resale certificates must be renewed at intervals not to exceed four years;
- B. This certificate may be used to document exempt sales of "chemicals to be used in processing an article to be produced for sale."
- C. Buyer acknowledges that the misuse of the tax due, in addition to the tax, interest, and any other penalties imposed by law.
27. Wisconsin allows this certificate to be used to claim a resale exemption only. It does not permit this certificate to be used to claim any other type of exemption.

JOB AID – CERTIFICATE REQUIREMENTS

RESELLERS

Multi-jurisdictional certificate (<http://www.mtc.gov/Resources.aspx?id=1594>) covers all states other than:

AL – State/Local Tax (now referred to as: Utility Gross Receipts (UGR) Tax)

This may include either of the following forms:

- AL State Utility/Mobile Communications Service Tax (STE-3 Form)
- AL Sales Tax License - The 'Account Type' must be listed as: MTC or UGR
- Utility Tax License - The 'Account Type' must be listed as: UGR
- Utility Privilege Tax

FL – DR-700015 – Florida Annual Resale Certificate for Communications Services Tax *and*

FL – DR-13 – Florida Annual Resale Certificate for Sales Tax (Both are State issued certs)

IN – Form ST-105 or SSTP Form (for CPE)

IN – Form ST-109 (for Telecom Services) or 109 acceptable for resellers or Formal letter from IN DOR in lieu of (ST-109)

LA – R-1332 (Telecom Taxes) and Form R-1028 (TPP)

ME – Resale Certificate (State Issued)

MA – Form ST-4 (Sales Tax Resale Certificate) and State issues reseller proof of status for E911 exemption

MS – Sales and Use Tax Permit (State Issued) and State issues reseller proof of status for E911 exemption

MT – Form TEC (Retail Telecom Excise Tax) and State issues reseller proof of status for E911 exemption

NH – Form DP-143 and State issues reseller proof of status for E911 exemption

NY – Form ST-120 (Resale Certificate) and CT-120 (Telecom Taxes)

PR-AS 2916.1 (Certificate for Exempt Purchases & Copy of Gov-issued Exemption Certificate)

VA – Form CT-10(Communications Tax), ST-10 (TPP) and State issues reseller proof of status for E911 exemption

WV – Form F0003 (Exemption Certificate)

WY – Form F0003 (Exemption Certificate) and State issues reseller proof of status for E911 exemption

CERTIFICATE OF EXEMPTION BY AN ISP UNDER THE INTERNET TAX FREEDOM ACT

If the Customer is an Internet Service Provider; ISP's should complete the attached ITFA Exemption Certificate with respect to Services obtained from AT&T that are purchased, used, or sold to provide Internet access



2005 Florida Annual Resale Certificate for Sales Tax

DR-13
R. 01/05

THIS CERTIFICATE EXPIRES ON DECEMBER 31, 2005

Business Name and Location Address

Registration Effective Date

Certificate Number

McPhee Exhibit 2

This is to certify that all tangible personal property purchased or rented, real property rented, or services purchased on or after the above Registration Effective Date by the above business are being purchased or rented for one of the following purposes:

- Resale as tangible personal property.
- Re-rental as tangible personal property.
- Resale of services.
- Re-rental as real property.
- Incorporation into and sale as part of the repair of tangible personal property by a repair dealer
- Re-rental as transient rental property.
- Incorporation as a material, ingredient, or component part of tangible personal property that is being produced for sale by manufacturing, compounding, or processing.

This certificate cannot be reassigned or transferred. This certificate can only be used by the active dealer or its authorized employees. Misuse of this Annual Resale Certificate will subject the user to penalties as provided by law. **Use signed photocopy for resale purposes.**

Presented to: _____
(Insert name of seller on photocopy.) (date)

Presented by: _____
Authorized Signature (Purchaser) (date)