Table of Contents
Commission Conference Agenda
October 13, 2015

1**	**Consent Agenda** ... 1
2**PAA	**Docket No. 150169-EI –** Complaint by James DiGirolamo vs. Florida Power & Light Company. ... 6
3	**Docket No. 150185-EI –** Complaint by Erika Alvarez, Jerry Buechler, and Richard C. Silvestri against Florida Power & Light Company. ... 7
4**PAA	**Docket No. 140217-WU –** Application for staff-assisted rate case in Sumter County by Cedar Acres, Inc. ... 8
5**PAA	**Docket No. 150172-GU –** Petition for approval of amendments to special contract with Polk Power Partners, L.P., by Florida Division of Chesapeake Utilities Corporation. ... 13
6**PAA	**Docket No. 150175-GU –** Petition for approval of amendment to special contract with Orange Cogeneration Limited Partnership, by Florida Division of Chesapeake Utilities ... 14
7**	**Docket No. 150092-WS –** Request for approval of amendment to tariff for miscellaneous service charges by Marion Utilities, Inc. ... 15
8	**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. ... 17

Item 1

FILED OCT 01, 2015
DOCUMENT NO. 06179-15
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Telecommunications (S. Deas)
Office of the General Counsel (L. Ames)

RE: Request for approval of transfer of ownership of Florida Hearing and Telephone Corporation d/b/a Florida Hearing and Telephone, holder of CLEC Certificate No. 8797, from Brooks Rule to Glenda Sue Harvison.

AGENDA: 10/13/2015 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

Please place the following Request for Approval of Transfer of ownership and Certificate of Necessity or Authority on the consent agenda for approval.

DOCKET NO.	COMPANY NAME	CERT. NO.
150072-TX	Florida Hearing and Telephone Corporation d/b/a Florida Hearing and Telephone	8797

The Commission is vested with jurisdiction in this matter pursuant to Section 364.335, Florida Statutes. This Certificate of Authority authorizes Florida Hearing and Telephone Corporation to provide Telecommunications Services in the State of Florida as a Telecommunications Company as defined by Section 364.02(13), Florida Statutes. Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee if the certificate is active during any portion of the calendar year. A Regulatory Assessment Fee Return Notice will be mailed each December to the entity listed above for payment by January 30.

FILED OCT 01, 2015
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FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Telecommunications (S. Deas) S.D.
Office of the General Counsel (S. Hopkins)

RE: Application for Certificate of Authority to Provide Local Telecommunications Service by Optical Communications, Inc.

AGENDA: 10/13/2015 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

Please place the following Application for Certificate of Authority to Provide Telecommunications Service on the consent agenda for approval.

DOCKET NO.	COMPANY NAME	CERT. NO.
150173-TX	Optical Communications, Inc.	8880

The Commission is vested with jurisdiction in this matter pursuant to Section 364.335, Florida Statutes. This Certificate of Authority authorities Optical Communications, Inc. to provide Telecommunications Services in the State of Florida as a Telecommunications Company as define by Section 364.02(13), Florida Statutes. Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee if the certificate is active during any portion of the calendar year. A Regulatory Assessment Fee Return Notice will be mailed each December to the entity listed above for payment by January 30.

FILED OCT 01, 2015
DOCUMENT NO. 06182-15
FPSC - COMMISSION CLERK

State of Florida

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Archer, Buys, Cicchetti)
Office of the General Counsel (Barrera)

RE: Docket No. 150188-EI – Application for authority to issue and sell securities during 12 months ending December 31, 2016, by Duke Energy Florida, LLC.

AGENDA: 10/13/15 - Consent Agenda - Final Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Please place the following securities application on the consent agenda for approval.

Docket No. 150188-EI – Application for authority to issue and sell securities during 12 months ending December 31, 2016, by Duke Energy Florida, LLC.

Application of Duke Energy Florida, Inc. (DEF or company) seeks authority to issue, sell or otherwise incur during 2016 up to $1.5 billion of any combination of equity securities, long-term debt securities and other long-term obligations. The total excludes amounts related to the potential issuance of any nuclear-asset-recovery bonds (i.e., the potential debt securitization of Crystal River 3 regulatory asset), which will be addressed by the Commission in Docket No. 150171-EI. If approved by the Commission and executed, the nuclear asset-recovery bonds will not be issued through DEF; instead, they will be issued through a special purpose entity. Additionally, the company requests authority to issue, sell, or otherwise incur during 2016 and 2017 up to $1.5 billion outstanding at any time of short-term debt securities and other obligations.

In connection with this application, DEF confirms that the capital raised pursuant to this application will be used in connection with the activities of DEF and not the unregulated activities of its unregulated subsidiaries or affiliates.

Staff has reviewed the company's projected capital expenditures. The amount requested by the company exceeds its expected capital expenditures. The additional amount requested exceeding the projected capital expenditures allows for financial flexibility with regard to unexpected events such as hurricanes, financial market disruptions, and other unforeseen circumstances. Staff believes the requested amounts are appropriate. Staff recommends DEF's petition to issue securities be approved.

For monitoring purposes, this docket should remain open until April 28, 2017, to allow the company time to file the required Consummation Report.

FILED OCT 01, 2015
DOCUMENT NO. 06186-15
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Archer, Buys, Cicchetti)
Office of the General Counsel (Barrera)

RE: Docket No. 150190-EI – Application for authority to issue and sell securities during calendar year 2016, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company.

AGENDA: 10/13/15 – Consent Agenda – Final Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Please place the following securities application on the consent agenda for approval.

Docket No. 150190-EI – Application for authority to issue and sell securities during calendar year 2016, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company.

Florida Power & Light Company (FPL or company) seeks authority to issue and sell and/or exchange any combination of long-term debt and equity securities and/or to assume liabilities or obligations as guarantor, endorser, or surety in an aggregate amount not to exceed $6.1 billion during calendar year 2016. In addition, FPL seeks permission to issue and sell short-term securities during calendar years 2016 and 2017 in an amount or amounts such that the aggregate principal amount of short-term securities outstanding at the time of and including any such sale shall not exceed $4.0 billion.

In connection with this application, FPL confirms that the capital raised pursuant to the application will be used in connection with the activities of FPL and FPL's regulated subsidiaries and not the unregulated activities of FPL or its unregulated subsidiaries or affiliates.

Staff has reviewed the company’s projected capital expenditures. The amount requested by the company exceeds its expected capital expenditures. The additional amount requested exceeding the projected capital expenditures allows for financial flexibility with regards to unexpected events such as hurricanes, financial market disruptions and other unforeseen circumstances. Staff believes the requested amounts are appropriate. Staff recommends FPL’s petition to issue securities be approved.

For monitoring purposes, this docket should remain open until April 28, 2017, to allow the company time to file the required Consummation Report.

FILED OCT 01, 2015
DOCUMENT NO. 06183-15
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Yeazel, Buys, Cicchetti) SY DRB MC ALM
Office of the General Counsel (Barrera) MB JSC

RE: Docket No. 150194-EI – Application for authority to issue and sell securities for 12 months ending December 31, 2016, by Tampa Electric Company.

AGENDA: 10/13/15 – Consent Agenda - Final Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Please place the following securities application on the consent agenda for approval.

Docket No. 150194-EI – Application for authority to issue and sell securities for 12 months ending December 31, 2016, by Tampa Electric Company.

Tampa Electric Company (Tampa Electric or company) seeks the authority to issue, sell and/or exchange equity securities and issue, sell, exchange and/or assume long-term or short-term debt securities and/or to assume liabilities or obligations as guarantor, endorser, or surety during calendar year 2016. The company also seeks authority to enter into interest rate swaps or other derivative instruments related to debt securities during calendar year 2016. The amount of all equity and long-term debt securities issued, sold, exchanged or assumed and liabilities and obligations assumed or guaranteed as guarantor, endorser, or surety will not exceed in the aggregate $1.5 billion during calendar year 2016, including any amounts issued to retire existing long-term debt securities. The maximum amount of short-term debt outstanding at any one time will be $1.0 billion during calendar year 2016. This application is for both Tampa Electric and its local gas distribution division, Peoples Gas System.

In connection with this application, the company confirms that the capital raised pursuant to this application will be used in connection with the activities of the company's regulated electric and gas divisions and not the unregulated activities of the utilities or their affiliates.

Staff has reviewed the company's projected capital expenditures. The amount requested by the company exceeds its expected capital expenditures. The additional amount requested exceeding the projected capital expenditures allows for financial flexibility with regards to unexpected events such as hurricanes, financial market disruptions, and other unforeseen circumstances. Staff believes the requested amounts are appropriate. Staff recommends Tampa Electric's petition to issue securities be approved.

For monitoring purposes, this docket should remain open until April 28, 2017, to allow the company time to file the required Consummation Report.

FILED OCT 01, 2015
DOCUMENT NO. 06185-15
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

SY DRB MC ALM

FROM: Division of Accounting and Finance (Yeazel, Buys, Cicchetti)
Office of the General Counsel (Barrera)

JSC MFB

RE: Docket No. 150195-EI – Application for authority to issue and sell securities and to receive common equity contributions during twelve months ending December 31, 2016, by Gulf Power Company.

AGENDA: 10/13/15 – Consent Agenda – Final Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Please place the following securities application on the consent agenda for approval.

Docket No. 150195-EI – Application for authority to issue and sell securities and to receive common equity contributions during twelve months ending December 31, 2016, by Gulf Power Company.

Gulf Power Company (Gulf Power or company) seeks authority to receive equity funds from and/or to issue common equity securities to its parent company, Southern Company (Southern); issue and sell long-term debt and equity securities; and issue and sell short-term debt securities during 2016. The amount of common equity contributions received from and issued to Southern, the amount of other equity securities issued, and the maximum principal amount of long-term debt securities issued will total not more than $600 million. The maximum principal amount of short-term debt at any one time will total not more than $500 million.

In connection with this application, Gulf Power confirms that the capital raised pursuant to this application will be used in connection with the regulated electric operations of Gulf Power and not the unregulated activities of the utility or its affiliates.

Staff has reviewed the company's projected capital expenditures. The amount requested by the company exceeds its expected capital expenditures. The additional amount requested exceeding the projected capital expenditures allows for financial flexibility with regards to unexpected events such as hurricanes, financial market disruptions and other unforeseen circumstances. Staff believes the requested amounts are appropriate. Staff recommends Gulf Power's petition to issue securities be approved.

For monitoring purposes, this docket should remain open until April 28, 2017, to allow the company time to file the required Consummation Report.

Item 2

FILED OCT 01, 2015
DOCUMENT NO. 06180-15
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Leathers, Crawford) MJL JSC
Office of Consumer Assistance and Outreach (Forsman, Valdez De Gonzalez)
Division of Economics (Ollila) A.O.

RE: Docket No. 150169-EI – Complaint by James DiGirolamo vs. Florida Power & Light Company.

AGENDA: 10/13/15 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On July 7, 2014, Mr. James DiGirolamo filed an informal complaint against Florida Power & Light Company (FPL) with the Commission's Office of Consumer Assistance and Outreach (CAO).[1] Mr. DiGirolamo's informal complaint alleged that the electric bills for his commercial property's account with FPL markedly increased after FPL replaced his analog meter with a communicating (smart) meter. Mr. DiGirolamo contended that his electric usage had not increased, and FPL was improperly billing his business for demand usage. Mr. DiGirolamo further requested that FPL remove the new smart meter and replace it with his old meter. Several Commission staff members worked with Mr. DiGirolamo and FPL to resolve his informal complaint. On February 10, 2015, staff sent Mr. DiGirolamo its disposition letter

[1] Complaint Number 1152095E.

indicating that his informal complaint had been reviewed and that his account appeared to have been billed properly. On March 2, 2015, staff closed Mr. DiGirolamo's informal complaint.

Due to his dissatisfaction with staff's disposition of his informal complaint, Mr. DiGirolamo filed a formal complaint against FPL on June 16, 2015. The complaint reiterates his claims set forth in his informal complaint. In the complaint, Mr. DiGirolamo relays that he has occupied his commercial property since December 2002, and that his electric bills have averaged "$500-550 per month, all this time." The complaint further states that "[a]fter installing the smart meters . . . . [his] bill each month is $750 and up." Mr. DiGirolamo advises that his business "is using the same electric that [it has] always used." Mr. DiGirolamo also states that "[t]here is no way that [his] little business, is taxing or creating a demand on the electrical grid, as FPL suggests."

On August 7, 2015, FPL filed a Motion to Dismiss Complaint. In summary, FPL states that Mr. DiGirolamo's complaint fails to cite any statute, rule, or order which FPL allegedly violated and should, therefore, be dismissed for failing to meet the pleading requirements of Rule 25-22.036, Florida Administrative Code (F.A.C.). FPL further contends that the complaint, even when read in the light most favorable to Mr. DiGirolamo, fails to specify a cause of action or the relief being sought and should, therefore, be dismissed.

On August 11, 2015, legal staff contacted Mr. DiGirolamo to notify him that he may furnish a response to FPL's Motion to Dismiss Complaint or any other information he may have in support of his complaint. To date, staff has not received any additional information from Mr. DiGirolamo.

This recommendation addresses whether FPL's Motion to Dismiss Complaint should be granted and the appropriate disposition of Mr. DiGirolamo's complaint against FPL. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission grant FPL's Motion to Dismiss Complaint?

Recommendation: No. While Mr. DiGirolamo's complaint does not comply with technical pleading rules, the Commission has significant information before it upon which it can make a decision on the substance of the complaint. (Leathers)

Staff Analysis: FPL alleges that Mr. DiGirolamo's complaint fails to meet the pleading requirements for a formal complaint because it does not "cite or reference any rule, order or statute which FPL has allegedly viotaled." As such, FPL contends that it cannot "adequately research, prepare and formulate a defense." For formal administrative proceedings authorized by Chapter 120, F.S., the Uniform Rules of Procedure contained in Chapter 28-106, F.A.C., apply. In addition to the Uniform Rules which govern all administrative proceedings, the Commission has adopted specific procedural rules to govern proceedings before it, which are contained in Chapter 25-22, F.A.C. As cited by FPL, Rule 25-22.036, F.A.C., requires that a formal complaint must contain:

1. The rule, order, or statute that has been violated;
2. The actions that constitute the violation;
3. The name and address of the person against whom the complaint is lodged; and
4. The specific relief requested, including any penalty sought.

FPL states that Mr. DiGirolamo's allegations that his bill increased after the smart meter was installed, that his business's electric usage has remained the same, and that "[t]here is no way [his] little business, is taxing or creating demand on the electrical grid, as FPL suggests" are "vague and ambiguous at best" and do not mention any alleged violation of rules, statutes, or orders. Additionally, FPL states that Mr. DiGirolamo's request for "immediate relief, from these unrealistic charges" does not comply with Rule 25-22.036 because it is not specific, nor even suggestive of the type of relief sought. Accordingly, FPL asserts that Mr. DiGirolamo's complaint should be dismissed.

FPL further asserts that Mr. DiGirolamo's complaint should be dismissed because it fails to state a legal cause of action upon which relief may be granted. FPL states:

> In order to determine whether the petition states a cause of action upon which relief may be granted, it is necessary to examine the elements needed to be alleged under the substantive law on the matter. All of the elements of a cause of action must be properly alleged in a pleading that seeks affirmative relief. If they are not the pleading should be dismissed.[2]

[2] Quoting Order No. PSC-99-1054-FOF-EI, issued May 24, 1999, in Docket No. 981923-EI, In re: Complaint and petition of John Charles Heekin against Florida Power & Light Company (citing Kislak v. Kreedian, 95 So. 2d 510, Fla. 1957).

Applying that Commission order, FPL asserts that Mr. DiGirolamo's complaint should be dismissed because "[s]imply alleging that [he] does not agree with FPL's monthly bills for service is not a legal cause of action."

Section 120.569(2)(c), F.S., states, in part, that this Commission shall dismiss a petition for failure to substantially comply with the uniform rules. Pursuant to this statute, the dismissal of a petition should, at least once, be without prejudice to the petitioner to allow the filing of a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. However, the Commission has previously held pro se litigants such as Mr. DiGirolamo to a relaxed pleading standard, in order to prevent delay and promote resolution of litigants' claims.[3]

Staff believes the facts and law in this docket are sufficiently developed and a complaint in strict compliance with the rule is not necessary in order for the Commission to make a decision at this time. The extensive documentation in this docket, including the informal complaint files, Mr. DiGirolamo's formal complaint, FPL's Motion to Dismiss Complaint, and the documented correspondence between staff and Mr. DiGirolamo provides significant information about Mr. DiGirolamo's factual assertions and requested relief. Staff believes this information is sufficient to allow the Commission to make a decision on the substance of Mr. DiGirolamo's complaint, and does not believe it would be an efficient use of the parties' resources to require Mr. DiGirolamo to amend his complaint merely to comply with the technical pleading rules. Therefore, staff recommends that the Commission deny FPL's Motion to Dismiss Complaint. Instead, staff recommends that the Commission proceed to make a decision on the substance of Mr. DiGirolamo's complaint, as discussed in Issue 2.

[3]See, *e.g.* Order No. PSC-11-0117-FOF-PU, issued February 17, 2011, in Docket Nos. 100175-TL and 100312-EI, Complaint against AT&T d/b/a BellSouth for alleged violations of various sections of Florida Administrative Code, Florida Statutes, and AT&T regulations pertaining to billing of charges and collection of charges, fees, and taxes; In re: Complaint against Florida Power & Light Company for alleged violations of various sections of Florida Administrative Code, Florida Statutes, and FPL tariffs pertaining to billing of charges and collection of charges, fees, and taxes; Order No. PSC-02-1344-FOF-TL, issued October 3, 2002, in Docket No. 020595-TL, In re: Complaint of J. Christopher Robbins against BellSouth Telecommunications, Inc. for violation of Rule 25-4.073(1)(c), F.A.C., Answering Time; Order No. PSC-12-0252-FOF-EI, issued May 23, 2012, in Docket No. 110305-EI, In re: Initiation of formal proceedings of Complaint No. 1006767E of Edward McDonald against Tampa Electric Company, for alleged improper billing.

Issue 2: What is the appropriate disposition of Mr. DiGirolamo's complaint?

Recommendation: Mr. DiGirolamo's formal complaint should be denied and he should pay any outstanding account balance. It appears that Mr. DiGirolamo's account was properly billed in accordance with FPL's tariffs along with Commission rules and statutes. Furthermore, it does not appear that FPL has violated any jurisdictionally applicable provision of the Florida Statutes, the Florida Administrative Code, or its tariff in the handling of Mr. DiGirolamo's account. (Leathers, Ollila, Forsman, Valdez De Gonzalez)

Staff Analysis:

Formal Complaint

Mr. DiGirolamo asserts that his commercial property's electric bills have risen since FPL replaced his old analog meter with a smart meter on May 20, 2014. Mr. DiGirolamo contends that his business's electrical consumption has not increased and the demand usage charges are being unjustifiably imposed upon his account.

The following list is a summary of all of the investigative activity that has been performed on behalf of Mr. DiGirolamo in an effort to address his complaint.

1. June 16, 2014 – An FPL Customer Care Center representative offered to organize a Business Energy Evaluation (BEE) for Mr. DiGirolamo's business to identify any inefficiencies which may have an adverse impact on Mr. DiGirolamo's utility bills. Mr. DiGirolamo accepted this offer.

2. July 3, 2014 – An FPL Business Account Specialist visited Mr. DiGirolamo's business to conduct the BEE. Upon the Specialist's arrival, Mr. DiGirolamo relayed that his electric bill increased after the smart meter was installed. The Specialist explained that the new meter registered demand usage that was not previously captured by the analog meter, and that some businesses were experiencing higher bills as a result. Mr. DiGirolamo then cancelled the BEE appointment. Subsequently, Mr. DiGirolamo contacted FPL's Customer Care Center to dispute the demand charges and requested that the smart meter be removed and replaced with his old analog meter. A Customer Care Center Supervisor discussed Mr. DiGirolamo's concerns with him and requested an FPL Corporate Resolution Specialist to contact Mr. DiGirolamo. Later that day, an FPL Corporate Resolution Specialist contacted Mr. DiGirolamo to discuss his concerns regarding the demand usage. Furthermore, the Specialist offered to rebill Mr. DiGirolamo's current bill, less the demand usage charge. However, Mr. DiGirolamo indicated dissatisfaction and advised he would file a complaint with the Commission.

3. July 7, 2014 – A second FPL Corporate Resolution Specialist contacted Mr. DiGirolamo to discuss his concerns. At that time, the Specialist explained demand usage and that Mr. DiGirolamo's demand usage exceeded the threshold of 20 kW, which changed Mr. DiGirolamo's rate to General Service Demand per FPL's rate schedule. The Specialist offered Mr. DiGirolamo another BEE and a meter test. Mr. DiGirolamo accepted the offered meter test but declined the offered BEE.

4. July 8, 2014 – An FPL Advocacy Supervisor contacted Mr. DiGirolamo to discuss his concerns and offered to adjust his business's electric bills for six months to assist with his transition to the new billing rate. Specifically, the Supervisor informed Mr. DiGirolamo that every month for six months, beginning with his June 12, 2014 bill, the demand usage would not be billed and his business would remain on the General Service – Non-Demand rate. Mr. DiGirolamo accepted the Supervisor's offer and indicated his satisfaction with this resolution.

5. July 9, 2014 – FPL visited Mr. DiGirolamo's business and removed smart meter number KJ64196 and sent it to FPL's Meter Technology Center to be tested. That smart meter was replaced with smart meter number KJ73274. The results of the meter test were: full load – 99.96%; light load – 99.96%; weighted average – 99.97%. The meter test results confirmed that smart meter number KJ64196 was recording electric consumption accurately in accordance with Rule 25-6.052(3), F.A.C.

6. July 10, 2014 – The aforementioned second FPL Corporate Resolution Specialist contacted Mr. DiGirolamo to inform him of the meter test results. Mr. DiGirolamo indicated that he was satisfied.

7. December 15, 2014 – In light of Mr. DiGirolamo's request that the Commission reopen his informal complaint, the FPL Specialist contacted Mr. DiGirolamo to discuss his concerns. At that time, Mr. DiGirolamo expressed that he was unsatisfied and believed the demand charge to be inappropriate. Subsequently, the Specialist attempted to re-explain demand usage. Furthermore, the Specialist informed Mr. DiGirolamo that he had received a courtesy billing adjustment for six months and that FPL would not be able to provide any further billing adjustments.

8. December 18, 2014 – The FPL Specialist returned a message from Mr. DiGirolamo and again explained the demand usage being billed to Mr. DiGirolamo. Mr. DiGirolamo requested that FPL remove the smart meter and replace it with a non-smart meter because he preferred to pay FPL's Non Standard Meter Option. The Specialist indicated that he would investigate this option and provide Mr. DiGirolamo with any relevant information.

9. December 22, 2014 – The FPL Specialist contacted Mr. DiGirolamo to inform him that the only non-smart meters available for his meter class were electronic, which would continue to register his business's demand usage. Mr. DiGirolamo indicated his dissatisfaction and, again, contended that he did not believe that his business is eligible for the demand usage charge. The Specialist offered another BEE to assist Mr. DiGirolamo with his understanding of demand usage. Mr. DiGirolamo declined this offer.

10. January 6, 2015 – Staff reviewed FPL's response to Mr. DiGirolamo's informal complaint and found that it appears that Mr. DiGirolamo's account is being billed properly and that FPL is acting within the Commission's rules. Upon reporting these findings, Mr. DiGirolamo raised continued objections to the demand usage charge and indicated that the charge was inappropriate. Based on Mr. DiGirolamo's

continued dissatisfaction, his informal complaint was escalated to the process review phase of the complaint progression in accordance with Rule 25-22.032(7), F.A.C.

11. January 7, 2015 – Pursuant to Rule 25-22.032(3), F.A.C., FPL was sent a routine notice that FPL must notify the Commission of all communications it has with Mr. DiGirolamo and that FPL could not disconnect Mr. DiGirolamo for nonpayment of the disputed amount.

12. January 9, 2015 – Staff contacted Mr. DiGirolamo to discuss his concerns regarding the demand usage charge.

13. January 12, 2015 – Staff contacted FPL to request a refereed meter test of meter number KJ64196.

14. January 13, 2015 – Staff contacted FPL to request a 36-month account audit and the copies of the billing statements issued during that time period.

15. January 16, 2015 – Staff contacted FPL to verify when Mr. DiGirolamo's account was established and the date when electromechanical polyphase meter number 5J27249 (Mr. DiGirolamo's original, analog meter) was installed.

16. January 21, 2015 – Staff contacted FPL to discuss the demand rate charged to Mr. DiGirolamo's account.

17. January 28, 2015 – Commission Field Engineers met with FPL's Regulatory Consumer Issues Manager and FPL Meter Electricians at FPL's Meter Technology Center to complete a witnessed meter test of meter number KJ64196. The results of the meter test were: full load – 100.02%; light load – 100.02%; weighted average – 100.03%. These results confirmed that the subject meter was recording electric consumption accurately in accordance with Rule 25-6.052(3), F.A.C. Staff reported that a visual inspection of the meter was conducted and no abnormalities were identified.

18. February 10, 2015 – Staff sent a close-out letter to Mr. DiGirolamo summarizing its review of his account activity, electrical consumption, and meter accuracy. Staff stated that it appears that FPL has complied with the applicable statutes, rules, tariffs, and orders of the Commission.

19. March 2, 2015 – Staff closed Mr. DiGirolamo's informal complaint.

20. June 15, 2015 – Mr. DiGirolamo contacted staff and requested further review of his case. As a result of Mr. DiGirolamo's continued dissatisfaction and his objection to staff's findings, Mr. DiGirolamo was provided with information regarding the formal complaint process.

21. June 16, 2015 – The Commission Clerk received an electronic request from Mr. DiGirolamo to open a formal complaint against FPL. This docket was subsequently opened.

22. August 11, 2015 – After receiving FPL's Motion to Dismiss Complaint, legal staff contacted Mr. DiGirolamo to notify him that, if he desired, he could provide a written response to FPL's motion, along with any other additional information pertinent to this docket. To date, Mr. DiGirolamo has not submitted any further information regarding this docket.

Staff's investigations regarding Mr. DiGirolamo's complaint indicate that the meter tests that FPL conducted were correctly performed, and that the equipment is operating within the Commission specified limits. Furthermore, staff has reviewed Mr. DiGirolamo's electric consumption and billing histories, and it appears from the information provided that the account has been billed consistent with FPL's tariff and the Commission's rules and statutes.

Electricity Consumption and Billing History

In order to more clearly understand this claim, staff reviewed FPL's electric consumption history for Mr. DiGirolamo's business address for the 36-month period of January 2012, through December 2014.

Based on staff's analysis of the 366-day billing period from December 12, 2011, through December 12, 2012, Mr. DiGirolamo consumed 42,648 kWh, an average daily usage of 116.5 kWh. Staff's analysis of the 365-day billing period from December 12, 2012, through December 12, 2013, reflected that Mr. DiGirolamo consumed 45,977 kWh, an average daily usage of 126 kWh. Based on staff's analysis of the 364-day billing period from December 12, 2013, through December 11, 2014, Mr. DiGirolamo consumed 46,451 kWh, an average daily usage of 127.6 kWh. Essentially, staff's review of Mr. DiGirolamo's electric consumption history did not reveal any unusual trends that would indicate skewed or disproportionate kWh consumption, but reflects a steady increase in Mr. DiGirolamo's consumption over the last three years. Staff also notes that Mr. DiGirolamo has declined several offers from FPL to have its staff conduct a free BEE at his place of business to assist him with managing his electricity expenses and identifying ways to conserve.

Staff also recognized that Mr. DiGirolamo's consumption was metered with an analog, electromechanical polyphase meter, which just measured energy-only kWh, from the time he established service in his name on October 25, 2002, through the day that FPL replaced it with the smart meter on May 20, 2014. Upon installation of smart meter number KJ64196, which measures both energy-only kWh and demand kW, it was discovered that Mr. DiGirolamo's demand usage was well exceeding the demand threshold of 20 kW. As a result, Mr. DiGirolamo's billing rate was changed from GS-1 to GSD-1. On July 7, 2014, in response to Mr. DiGirolamo's informal complaints, FPL offered to refrain from charging Mr. DiGirolamo the new GSD-1 rate for a period of six months to assist him with his transition to the new rate. Staff reviewed Mr. DiGirolamo's kW consumption and billing history for that six month period. Staff's analysis indicates that Mr. DiGirolamo's monthly kW demand during this time ranged from 32 kW to 34 kW and he received a credit adjustment totaling $1,454.40.

Meter Testing

On rare occasions, a defective or malfunctioning electric meter can contribute to unusually high or low electric bills. As a result, FPL removed meter number KJ64196 from Mr. DiGirolamo's premises to conduct a meter test on July 9, 2014, replacing it with meter number KJ73274. The results of the test confirmed the meter was functioning properly within guidelines established by the Commission.

Staff later arranged for meter number KJ64196 to be tested again. In accordance with Rule 25-6.060, F.A.C., Meter Test – Refereed Dispute, at the request of staff, on January 28, 2015, a witnessed inspection and meter test was performed on Mr. DiGirolamo's meter. This test was supervised by PSC field engineers. The results of this second test confirmed that the meter was functioning properly, in accordance with Rule 25-6.052(3), F.A.C. Accordingly, there is no evidence that Mr. DiGirolamo's electrical consumption is abnormally high, or that Mr. DiGirolamo's meter incorrectly recorded his business's electrical consumption.

Alleged Unjustified Demand Charges

Electricity consumers' billing statements reflect one or two components, depending on the amount of electricity used and the usage level; these are energy and demand. Demand reflects how much electricity is used at any given moment during the billing period and is measured in kilowatts (kW). Residential consumers are only billed for the energy they use at any given moment during the billing period because most homes have a very similar energy use profile. However, electric consumption and demand among commercial and industrial energy users vary greatly. To meet these commercial and industrial customers' brief high demands for power, electric utilities keep equipment, such as properly sized transformers, service wires, conductors, substations and even generating stations, on constant standby. Utilities' distribution systems must be designed for demand, and this demand must be accurately measured to insure sufficient services are provided to all customers. Customers who create this demand and the need for power during these periods of high demand pay for its availability as a separate charge for demand. Demand charges are measured by demand-measuring meters.

FPL uses demand-measuring meters that constantly track and record the highest 30-minute average level of kW demand each billing period. The kW demand is the amount of electric load required by the customer's electric equipment operating at any given time during a billing period. The kW demand is recorded for billing the demand charge each month then reset to zero on the meter after each meter reading is taken. FPL customers with a demand of 20 kW or less are billed at the GS-1 (General Service – Non Demand) rate. Customers with a measured demand in excess of 20 kW and less than 500 kW are billed at GSD-1 (General Service Demand) rate. For further information about the GSD-1 rate, FPL's tariff Sheet 8.105 General Service Demand is attached to this recommendation as Attachment A.

As previously mentioned, upon installation of smart meter number KJ64196, FPL discovered that Mr. DiGirolamo's demand usage was well exceeding the demand threshold of 20 kW. Accordingly, FPL changed Mr. DiGirolamo's billing rate from GS-1 to GSD-1. Notably, Mr. DiGirolamo's demand usage for his December 2014 and January 2015 billing statements was 36 kW and 30 kW, respectively. There is no evidence that Mr. DiGirolamo's demand usage is abnormally high, or that Mr. DiGirolamo's meter incorrectly recorded his business's demand usage.

Conclusion

Staff conducted a thorough and complete investigation of this matter and believes that FPL has complied with its tariff and all applicable statutes and Commission rules. Based on the information obtained by staff, it appears that Mr. DiGirolamo's business account was properly billed in accordance with FPL's tariffs along with Commission rules and statutes. The meter tests, analyses of Mr. DiGirolamo's electric consumption history, and review of Mr. DiGirolamo's billing history indicate that the charges and account balance are accurate. Mr. DiGirolamo has presented no documentation or evidence that supports his contention that he was improperly billed or that his recorded electric consumption is erroneous. Staff believes that FPL has accurately measured Mr. DiGirolamo's demand usage and correctly calculated his billing statements. Furthermore, it does not appear that FPL has violated any jurisdictionally applicable provision of the Florida Statutes, the Florida Administrative Code, or its tariff in the handling of Mr. DiGirolamo's account. Therefore, staff recommends that the Commission deny Mr. DiGirolamo's formal complaint.

Issue 3: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Leathers)

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.

RETURN TO INDEX | PRINT SCHEDULE

GENERAL SERVICE DEMAND

RATE SCHEDULE: GSD-1

AVAILABLE:

In all territory served.

APPLICATION:

For electric service required for commercial or industrial lighting, power and any other purpose with a measured Demand in excess of 20 kW and less than 500 kW. Customers with a Demand of 20 kW or less may enter an agreement for service under this schedule based on a Demand Charge for a minimum of 21 kW.

SERVICE:

Single or three phase, 60 hertz and at any available standard voltage. All service required on premises by Customer shall be furnished through one meter. Resale of service is not permitted hereunder.

MONTHLY RATE:

Customer Charge:	$19.48
Demand Charges:	
Base Demand Charge	$7.95 per kW
Capacity Payment Charge	See Sheet No. 8.030, per kW
Conservation Charge	See Sheet No. 8.030, per kW
Non-Fuel Energy Charges:	
Base Energy Charge	1.861¢ per kWh
Environmental Charge	See Sheet No. 8.030
Additional Charges:	
Fuel Charge	See Sheet No. 8.030
Storm Charge	See Sheet No. 8.040
Franchise Fee	See Sheet No. 8.031
Tax Clause	See Sheet No. 8.031

Minimum: The Customer Charge plus the charge for the currently effective Base Demand. For those Customers with a Demand of 20 kW or less who have entered an agreement for service under this schedule, the minimum charge shall be the Customer Charge plus 21 kW times the Base Demand Charge; therefore the minimum charge is $186.43.

DEMAND:

The Demand is the kW to the nearest whole kW, as determined from the Company's thermal type meter or, at the Company's option, integrating type meter for the 30-minute period of Customer's greatest use during the month as adjusted for power factor.

TERM OF SERVICE:

Not less than one year.

RULES AND REGULATIONS:

Service under this schedule is subject to orders of governmental bodies having jurisdiction and to the currently effective "General Rules and Regulations for Electric Service" on file with the Florida Public Service Commission. In case of conflict between any provision of this schedule and said "General Rules and Regulations for Electric Service" the provision of this schedule shall apply.

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: January 2, 2015

Item 3

FILED OCT 01, 2015
DOCUMENT NO. 06187-15
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Corbari, Lherisson) KFC BZ KC
Division of Economics (Harlow, Margolis) JDH, RM
Office of Industry Development and Market Analysis (Marr) DMM MA

RE: Docket No. 150185-EI – Complaint by Erika Alvarez, Jerry Buechler, and Richard C. Silvestri against Florida Power & Light Company.

AGENDA: 10/13/15 – Regular Agenda – Motion to Dismiss – Oral Argument Not Requested – Participation at Commission's Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

RECEIVED-FPSC
15 OCT -1 AM 11:57
COMMISSION CLERK

Case Background

The instant docket is a complaint against Florida Power & Light Company (FPL) by three FPL customers, Erika Alvarez, Jerry Buechler, and Richard C. Silvestri (collectively referred to as Petitioners), who were unable to procure a residential solar photovoltaic (PV) rebate reservation during FPL's online residential solar PV rebate reservation offering in January 2015. Petitioners allege that FPL's administration of its online residential solar rebate reservation program was unfair and violated Florida Statutes and Commission Orders governing energy conservation goals and programs.

Conservation Goals and Solar Pilot Programs

Sections 366.80 through 366.85, and 403.519, Florida Statutes (F.S.), are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). Pursuant to Sections 366.81 and 366.82, F.S., the Commission is required to adopt energy conservation goals for Florida utilities subject to FEECA, as well as approve the plans and programs developed by each utility to meet the goals set by the Commission. FPL is one of seven utilities in Florida subject to FEECA.[1]

By Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, the Commission adopted annual numeric conservation goals for each of the FEECA utilities, including FPL, for the period 2010 through 2019.[2] Due to revisions to Section 366.82, F.S., in 2008,[3] the Commission requested the FEECA utilities to address demand-side renewable energy systems, such as solar PV systems, in their 2009 conservation goal-setting proceeding.[4] At the conclusion of the 2009 goal-setting proceeding, the Commission found that demand-side renewables were not cost-effective.[5] Based on evidence presented during the proceeding, however, the Commission ordered FPL and the other Investor Owned Utilities (IOUs)[6] to develop and offer solar pilot programs to encourage such resources.[7] In addition, the IOUs were directed to collect information relating to customer acceptance rates, energy production, and other data to refine potential future program offerings for solar technologies.[8] The costs for these programs were limited to 10 percent of each IOU's five-year average for costs recovered through the Energy Conservation Cost Recovery (ECCR) Clause to minimize the rate impacts to all customers.[9] Lastly, the Commission directed the IOUs to file pilot programs focused on encouraging solar water heating and solar PV technologies in the demand-side management (DSM) program approval process.[10]

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[1] The seven utilities subject to FEECA are Florida Power & Light Company (FPL), Duke Energy Florida, Inc. (DEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf), Florida Public Utilities Company (FPUC), JEA, and Orlando Utilities Commission (OUC).

[2] See Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, in Docket Nos. 080407-EG, In re: Commission review of numeric conservation goals (Florida Power & Light Company); 080408-EG, In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.); 080409-EG, In re: Commission review of numeric conservation goals (Tampa Electric Company); 0804010-EG, In re: Commission review of numeric conservation goals (Gulf Power Company); 080411-EG, In re: Commission review of numeric conservation goals (Florida Public Utilities Company); 080412-EG, In re: Commission review of numeric conservation goals (Orlando Utilities Commission); 080413-EG, In re: Commission review of numeric conservation goals (JEA).

[3] In 2008, the Legislature amended Section 366.82, F.S., to require the Commission to establish appropriate goals to encourage the development of demand-side renewable energy systems. Section 366.82, F.S., defines "Demand-side renewable energy" as a system located on a customer's premises using Florida renewable energy resources with a capacity that does not exceed 2 MWs.

[4] See Order No. PSC-09-0855-FOF-EG.

[5] Id.

[6] The investor-owned utilities in Florida are FPL, DEF, TECO, Gulf, and FPUC.

[7] See Order No. PSC-09-0855-FOF-EG.

[8] Id.

[9] Id.

[10] Id.

FPL Solar Pilot Programs

By Order No. PSC-11-0079-PAA-EG, the Commission approved FPL's solar pilot programs.[11] FPL offered three types of solar pilot programs: (1) solar water heating; (2) solar photovoltaic systems; and (3) research and demonstration. FPL's solar PV programs were designed for residential and business customers. All of FPL's solar pilot programs were implemented on a first-come first-served basis and assisted approximately 4,000 customers during 2011-2013, at a cost of approximately $30 million.[12] The PV pilot programs had high participation rates and residential and business customers quickly submitted requests for reservations each time an offering was announced.[13] Data presented during the 2014 conservation goal-setting proceeding showed that an average of 75 percent of FPL residential customers who received a pilot program reservation installed solar PV equipment, while FPL business customers had an average completion rate of 50 percent.[14]

In 2014, the Commission again reviewed the conservation goals of the FEECA utilities, pursuant to Section 366.82(6), F.S. By Order No. PSC-14-0696-FOF-EU, issued December 16, 2014, the Commission adopted new annual numeric conservation goals for the FEECA utilities, including FPL, for the period 2015 through 2024.[15] The Commission found that the solar pilot programs were not cost-effective and should be allowed to expire on December 31, 2015.[16] Specifically, the Commission found that:

> The [solar pilot] programs are not cost-effective and experience gained since the last goals proceeding indicates that consumers have continued to install systems without any rebates. The current solar rebates represent a large subsidy from the general body of ratepayers to a very small segment of each utility's customers.[17]

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[11] See Order No. PSC-11-0079-PAA-EG, issued January 31, 2011, in Docket No. 100155-EG, In re: Petition for approval of demand-side management plan of Florida Power & Light Company; See also Order No. PSC-11-0346-PAA-EG, issued August 16, 2011, in Docket No. 100155-EG (modifying and approving FPL's DSM plan and reaffirming Order No. PSC-11-0079-PAA-EG).

[12] See Order No. PSC-14-0696-FOF-EU, issued December 16, 2014, in Docket Nos. 130199-EI, In re: Commission review of numeric conservation goals (Florida Power & Light Company); 130200-EI, In re: Commission review of numeric conservation goals (Duke Energy Florida, Inc.); 130201-EG, In re: Commission review of numeric conservation goals (Tampa Electric Company); 130202-EI, In re: Commission review of numeric conservation goals (Gulf Power Company); 130203-EM, In re: Commission review of numeric conservation goals (JEA); 130204-EM, In re: Commission review of numeric conservation goals (Orlando Utilities Commission); 130205-EI, In re: Commission review of numeric conservation goals (Florida Public Utilities Company), at p. 51

[13] Id.

[14] Id.

[15] See Order No. PSC-14-0696-FOF-EU.

[16] Id., at p. 60; See also, Order No. PSC-14-0632-FOF-EG, issued on October 31, 2014, in Docket No. 140002-EG, In re: Energy conservation cost recovery clause., at p.3.

[17] See Order No. PSC-14-0696-FOF-EU, at p. 60.

On August 19, 2015, by Order No. PSC-15-0331-PAA-EG, the Commission approved FPL's DSM programs for the period 2015 through 2024.[18]

The Commission has jurisdiction pursuant to Chapter 366, F.S.

[18] See Order No. PSC-15-0331-PAA-EG, issued August 19, 2015, in Docket No. 150085-EG, In re: Petition for approval of Florida Power & Light Company's demand-side management plan and request to cancel closed on call tariff sheets.

Discussion of Issues

Issue 1: Should Florida Power & Light Company's Motion to Dismiss be granted?

Recommendation: Yes. Staff recommends that the Commission grant FPL's Motion to Dismiss and dismiss the complaint without prejudice because the complaint fails to demonstrate a cause of action upon which the requested relief may be granted. (Corbari, Lherisson)

Staff Analysis:

Standard of Review

A motion to dismiss challenges the legal sufficiency of the facts alleged in a petition to state a cause of action.[19] In order to sustain a motion to dismiss, the moving party must show that, accepting all allegations as true, the petition fails to state a cause of action for which relief may be granted.[20] The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner has stated the necessary allegations.[21] A sufficiency determination should be confined to the petition and documents incorporated therein, and the grounds asserted in the motion to dismiss.[22] Thus, "the trial court may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side."[23] All allegations in the petition must be viewed as true and in the light most favorable to the petitioner in order to determine whether there is a cause of action upon which relief may be granted.[24] Finally, pursuant to Section 120.569(2)(c), F.S., a petition shall be dismissed at least once without prejudice unless it conclusively appears from the face of the petition that the defect cannot be cured.[25]

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[19] Meyers v. City of Jacksonville, 754 So. 2d 198, 202 (Fla. 1st DCA 2000); Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).
[20] Varnes v. Dawkins, 624 So. 2d at 350.
[21] Matthews v. Matthews, 122 So. 2d 571 (Fla. 2nd DCA 1960).
[22] Barbado v. Green and Murphy, P.A., 758 So. 2d 1173 (Fla. 4th DCA 2000); Varnes v. Dawkins, 624 So. 2d at 350; and Rule 1.130, Florida Rules of Civil Procedure.
[23] Varnes v. Dawkins, 624 So. 2d at 350.
[24] See, e.g. Ralph v. City of Daytona Beach, 471 So. 2d 1, 2 (Fla. 1983); Orlando Sports Stadium, Inc. v. State of Florida ex rel Powell, 262 So. 2d 881, 883 (Fla. 1972); Kest v. Nathanson, 216 So. 2d 233, 235 (Fla. 4th DCA, 1986); Ocala Loan Co. v. Smith, 155 So. 2d 711, 715 (Fla. 1st DCA, 1963).
[25] See also, Kiralla v. John D. and Catherine T. MacArthur Found, 534 So. 2d 774, 775 (Fla. 4th DCA 1988)(stating that a dismissal with prejudice should not be ordered without giving the plaintiff an opportunity to amend the defective pleading, unless it is apparent that the pleading cannot be amended to state a cause of action); and Order No. PSC-11-0285-FOF-EI, issued June 29, 2011, in Docket No. 110069-EI, In re: Complaint of Rosario Rojo against Florida Power & Light Company.

Petitioners' Complaint

On August 17, 2015, Petitioners filed a complaint with the Commission alleging FPL violated Sections 366.81 and 366.82(3)(a)-(c), F.S., and Order No. PSC-14-0696-FOF-EU, during the administration of its two online residential solar PV rebate reservation program offerings in January 2015.[26] Petitioners allege that, on January 14, 2015, FPL's online residential solar PV rebate reservation opening occurred earlier than the "publically announced opening time of 8:30 a.m." Due to the early opening, the allocated rebate funds were depleted earlier than had the opening occurred at the advertised time of 8:30 a.m. As a result, Petitioners contend that neither they nor other applicants were given an "equal and fair opportunity to compete for a rebate while others had additional opportunity by taking advantage of an opening that was not announced beforehand."

Petitioners allege that due to its "gross error" in meeting "the statutes and rules of the PSC" during the January 14, 2015 offering, FPL conducted a second online residential solar rebate reservation offering on January 21, 2015, at 8:30 a.m., using the same format and process as the prior offering. Petitioners state that during the second offering, FPL's website "locked up" and prevented them from completing the application process. Mr. Silvestri, one of the Petitioners, contacted FPL when the website "locked up" and spoke to a FPL representative. Petitioners state that the FPL representative "acknowledged the site had locked up" and provided Mr. Silvestri with instructions "which failed to resolve the problem." When Petitioners were finally able to continue on the website, the allotted rebate funds had been depleted and the rebate offering was closed. Petitioners state that when Mr. Silvestri contacted FPL to complain following the second online offering, FPL advised Mr. Silvestri that "some [customers] were able to overcome the website problem." Petitioners claim that because some applicants were able to overcome the "website glitch," FPL failed "to have a fair, impartial and nondiscriminatory" rebate process as required by Sections 366.81, 366.82(3)(a)-(c) and Order No. PSC-14-0696-FOF-EU.

Petitioners further assert that implied in Order No. PSC-14-0696-FOF-EU is the requirement that "the process implemented by FPL must be fair, impartial and non-discriminatory." Petitioners state that the "rebate reservation process became a 'game of chance' and possibly allowed favoritism rather than equal treatment." As a result, FPL acted in bad faith in administering both online residential solar rebate reservation offerings by not ensuring all applicants "were treated fairly as evidenced by the unfair treatment given" to them in violation of Section 366.81, F.S.

Petitioners request that the Commission order FPL to conduct another reservation process before midnight, December 31, 2015. In addition, Petitioners request the Commission "closely monitor FPL during the planning, development and deployment of" the future rebate reservation, especially the technical details to ensure "a fair, impartial and non-discriminatory computerized process, in lieu of the one used by FPL."

[26] See Document No. 05144-153, in Docket No. 150185-EI, Complaint by Erika Alvarez, Jerry Buechler and Richard C. Silvestri against Florida Power & Light Company.

FPL's Motion to Dismiss

On September 1, 2015, FPL filed a motion to dismiss Petitioners' complaint with prejudice.[27] FPL asserts Petitioners' complaint fails to allege sufficient facts to state a cause of action upon which relief could be granted by the Commission. Specifically, FPL asserts that Petitioners' complaint: (1) fails to state "how the early opening constitutes a violation of the 2014 DSM Goals Order" or "constitutes a violation of FEECA;" (2) fails to state "specific allegations as to how or whether the website 'lock up' was the result of any action by FPL;" and (3) fails to allege any actions that "FPL treated certain customers in a discriminatory manner" during either of the online residential solar PV rebate reservation offerings. Because Petitioners did "not allege any unfair, partial or discriminatory actions by FPL," FPL argues that Petitioners' complaint should be dismissed.

FPL attached an exhibit in support of its motion to dismiss that staff believes is evidentiary in nature because it provides facts not included in Petitioners' complaint and that dispute Petitioners' allegations. Therefore, FPL's exhibit is not discussed or considered in staff's analysis in this recommendation.[28]

Mr. Silvestri and Ms. Alvarez's Response to FPL's Motion to Dismiss

On September 8, 2015, Mr. Silvestri and Ms. Alvarez filed a joint response to FPL's motion to dismiss.[29] In their response, Mr. Silvestri and Ms. Alvarez again assert that FPL's actions were unfair because certain applicants were able to complete the rebate process despite the technical issues that occurred during the online rebate offerings, "while others were barred from doing so based on technology on a machine by machine or computer by computer or IP by IP basis."[30] In addition, Mr. Silvestri and Ms. Alvarez's response spends a significant amount of time commenting on the information contained in the exhibit attached to FPL's motion to dismiss. Mr. Silvestri and Ms. Alvarez's comments on FPL's exhibit are not discussed or considered in staff's analysis herein for the reasons cited above.

Mr. Buechler's Response to FPL's Motion to Dismiss

On September 2, 2015, Mr. Buechler filed a request for extension of time to file a response to FPL's motion to dismiss, which was granted.[31] Mr. Buechler timely filed his response to FPL's motion to dismiss on September 24, 2015.[32] In his response, Mr. Buechler reiterates Petitioners'

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[27] See Document No. 05465-15, in Docket No. 150185-EI, FPL's Motion to Dismiss Complaint and Response to Motion for Oral Argument.
[28] See Varnes v. Dawkins, 624 So. 2d at 350 (the court "may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side").
[29] See Document No. 05605-15, in Docket No. 150185-EI, Silvestri-Alvarez Response to FPL's Motion to Dismiss Complaint and Oral Argument.
[30] Id., at p. 12.
[31] See Order No. PSC-15-0366-PCO-ES, issued September 9, 2015, in Docket No. 150185-EI.
[32] See Document No. 06033-15, in Docket No. 150185-EI, Buechler respond to FPL motion to dismiss.

assertions that FPL's online reservation process was unfair. Mr. Buechler also commented on FPL's exhibit, which are not discussed or considered in staff's analysis for the reasons previously cited.

Analysis

The Commission grants a motion to dismiss upon a finding that the pleading failed to state a cause of action upon which relief can be granted.[33] Rules 25-22.036 and 28-106.201, F.A.C., outline the procedures for filing a formal complaint. A pleading that conforms to the rules provides the act or omission that constitutes the violation, the statute that is violated, injury suffered, and remedy or penalty sought.[34] In addition, Section 120.569(2)(c), F.S., provides:

> Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b). Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition.

Here, staff believes that Petitioners' complaint fails to comply with the requirements of Rules 25-22.036(2) or 28-106.201, F.A.C., because the complaint contains no specific facts asserting an act or omission by FPL that resulted in a violation of a particular provision of a statute, rule or Commission Order affecting Petitioners' substantive interests.

Petitioners allege that FPL violated Sections 366.81 and 366.82(3)(a)-(c), F.S., and Commission Order No. PSC-14-0696-FOF-EU, during the administration of its online residential solar rebate reservation offerings in January 2015. Petitioners assert that FPL violated Section 366.81, F.S., and "acted in bad faith by not abiding by the goals delineated in the [statute]" during the administration of its online residential solar rebate reservation offerings. Pursuant to Section 366.81, F.S., the Florida Legislature directs the Commission to adopt energy conservation goals and approve the plans and programs each utility develops to meet the goals set by the Commission. In accordance with the Legislature's directive and the other FEECA statutes, the Commission adopted conservation goals for FPL and the other FEECA utilities, in 2009, and required FPL and the other IOUs to develop solar pilot programs.[35] In January 2011, the Commission approved FPL's solar pilot programs and set an annual expenditure cap of $15,536,870 for FPL's solar pilot programs.[36]

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[33] See Order No. PSC-11-0285-FOF-EI, issued June 29, 2011, in Docket No. 110069-EI, In re: Complaint of Rosario Rojo against Florida Power & Light Company; and Order No. PSC-11-0117-FOF-PU, issued on February 17, 2011, in Docket No. 100312-EI, Complaint against Florida Power & Light Company for alleged violations of various sections of Florida Administrative Code, Florida Statutes, and FPL tariffs pertaining to billing of charges and collection of charges, fees, and taxes (granting motion to dismiss with prejudice).

[34] See, Order No. PSC-11-0285-FOF-EI, issued June 29, 2011, in Docket No. 110069-EI, In re: Complaint of Rosario Rojo against Florida Power & Light Company.

[35] See Order No. PSC-09-0855-FOF-EG.

[36] See Order Nos. PSC-11-0079-PAA-EG, and PSC-11-0346-PAA-EG.

Petitioners' complaint fails to state how either the early opening of the reservation system during the first rebate offering or the website "lock up" that occurred during the second rebate offering, violated Section 366.81, F.S. In particular, Petitioners fail to allege any facts that FPL failed to: (1) meet the conservation goals set by the Commission, (2) fund its solar pilot programs within the expenditure cap set by the Commission, or (3) implement the solar pilot programs as approved by the Commission.

Petitioners also assert that FPL violated Section 366.82(3)(a)-(c), F.S., and Commission Order No. PSC-14-0696-FOF-EU. Section 366.82(3), F.S., sets out factors the Commission must consider when establishing conversation goals. Section 366.82(3)(a)-(c), F.S., states:

> In developing the goals, the commission shall evaluate the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems. In establishing the goals, the commission shall take into consideration:
> (a) The costs and benefits to customers participating in the measure.
> (b) The costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions.
> (c) The need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems.

Pursuant to Section 366.82(3), F.S., the Commission adopted conservation goals for FPL and the other FEECA utilities, in 2009 and, again in 2014.[37] In both the 2009 and 2014 DSM goal-setting proceedings, the Commission considered the factors set out in Section 366.82(3), F.S. In Order No. PSC-14-0696-FOF-EU cited by Petitioners, the Commission found that the solar pilot programs were "not cost-effective" and that the "solar rebates represent[ed] a large subsidy from the general body of ratepayers to a very small segment of each utility's customers."[38] Therefore, the Commission's findings on the solar pilot program in Order PSC-14-0696-FOF-EU stemmed from the Commission's consideration of the very factors set out in Section 366.82(3)(a)-(c), F.S.

No statute, Commission rule or Commission Order prescribes a particular format or manner in which FPL, or any other utility, is required to administer its solar rebate reservations. Moreover, Commission practice has been not to micromanage the business decisions of regulated companies, but to instead focus on the end-product goal.[39] Sections 366.81 and 366.82(7), F.S., provide for Commission approval of a utility's conservation plans and programs prior to implementation, and FPL's residential solar rebate program was approved by the Commission.

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[37] See Order Nos. PSC-09-0855-FOF-EG and PSC-14-0696-FOF-EU.
[38] See Order PSC-14-0696-FOF-EU.
[39] See Order No. PSC-04-0712-PAA-WS, issued July 20, 2004, in Docket Nos. 020896-WS, In re: Petition by customers of Aloha Utilities, Inc. for deletion of portion of territory in Seven Springs area in Pasco County, and 010503-WU, In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.

While FPL's first online residential solar rebate offering may have opened earlier than the announced time of 8:30 a.m. on January 14, 2015, Petitioners allege no facts to suggest that FPL opened the reservation offering prematurely either to ensure particular customers received a rebate reservation or to prevent Petitioners, or other customers, from obtaining a rebate reservation. Additionally, while FPL may have acknowledged its website "froze" during the second online residential solar rebate offering on January 21, 2015, Petitioners allege no facts to suggest that FPL caused the website to "lock up" in order to ensure particular customers received a rebate reservation or to prevent Petitioners, or other customers, from obtaining a rebate reservation. As a result, Petitioners' complaint fails to state any facts alleging how any of the technical events that occurred during either of FPL's online residential solar rebate reservation offerings violated Section 366.82(3)(a)-(c), F.S., or Order PSC-14-0696-FOF-EU. Moreover, Petitioners' complaint fails to state any facts alleging that FPL violated any Commission Order approving FPL's solar pilot programs.[40]

Despite Petitioners claims that FPL failed "to have a fair, impartial and nondiscriminatory" rebate process as required by Sections 366.81, 366.82(3)(a)-(c) and Order No. PSC-14-0696-FOF-EU, Petitioners' complaint fails to describe or provide any documentation of any specific FPL actions during the administration of the two online residential solar rebate reservation offerings to indicate that either of FPL's online rebate offerings was unfair, partial or discriminatory, or violated any statute, rule or Commission Order governing FPL's solar pilot programs.

Staff is sensitive to Petitioners' circumstances and, despite the lack of a legally sufficient pleading, staff conducted research into the substance of Petitioners' allegations in order to determine whether amendment of the complaint could lead to a situation where the Commission would have jurisdiction to grant Petitioners relief. When viewed within the "four corners of the complaint" exclusive of all affirmative defenses/responses, assuming all alleged facts are true, and in a light most favorable to Petitioners, staff does not believe Petitioners' complaint states a cause of action that would invoke the Commission's jurisdiction or permit the Commission to grant the requested relief. As previously set out, the Commission approved FPL's solar pilot programs with an annual expenditure cap.

Because Petitioners have not pled any specific facts, or produced any documentation, to support their claims that FPL violated any statute, rule, or other Commission requirement in the administration of its online residential solar PV rebate reservation offerings, staff recommends that the Commission grant FPL's motion to dismiss. Staff recommends, however, Petitioners' complaint be dismissed without prejudice in accordance with Section 120.569(2)(c), F.S., thus allowing Petitioners to file an amended complaint. Should Petitioners choose to file an amended complaint, staff recommends that the complaint conform to the pleading requirements of Rules 25-22.036 and 28-106.201, F.A.C., and request appropriate relief.

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[40] See Order Nos. PSC-11-0079-PAA-EG and PSC-11-0346-PAA-EG.

Conclusion

Staff recommends that the Commission grant FPL's Motion to Dismiss and dismiss the complaint without prejudice because the complaint fails to demonstrate a cause of action upon which the requested relief may be granted.

Issue 2: Should this docket be closed?

Recommendation: No. If the Commission agrees with staff regarding Issue 1, then Petitioners' complaint should be dismissed without prejudice, and Petitioners should be permitted to file an amended complaint. Should Petitioners fail to timely file an amended complaint, the docket should be administratively closed. (Corbari, Lherisson)

Staff Analysis: If the Commission agrees with staff regarding Issue 1, then Petitioners' complaint should be dismissed without prejudice, and Petitioners should be permitted to file an amended complaint. Should Petitioners fail to timely file an amended complaint, the docket should be administratively closed.

Item 4

FILED OCT 01, 2015
DOCUMENT NO. 06181-15
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Galloway, Fletcher, Smith)
Division of Economics (Hudson, Thompson)
Division of Engineering (Mtenga, Vickery)
Office of the General Counsel (Ames, Corbari)

RE: Docket No. 140217-WU – Application for staff-assisted rate case in Sumter County by Cedar Acres, Inc.

AGENDA: 10/13/15 – Regular Agenda – Proposed Agency Action Except for Issues Nos. 10, 12, and 17 - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: 04/18/16 (15-Month Effective Date (SARC))

SPECIAL INSTRUCTIONS: None

Table of Contents

Issue	Description	Page
	Case Background	3
1	Quality of Service (Mtenga)	4
2	Used and Useful (Mtenga)	6
3	Rate Base (Galloway)	8
4	Rate of Return (Galloway, Smith)	10
5	Test Year Revenue (Thompson)	11
6	Operating Expense (Smith)	12
7	Operating Ratio (Galloway)	17
8	Revenue Requirement (Galloway, Smith)	20
9	Rates and Rate Structure (Thompson)	21
10	Four-Year Rate Reduction (Thompson, Smith)	23
11	Escrow (Galloway, Smith, Ames)	24
12	Rates in Event of Protest (Smith, Thompson, Ames)	26
13	Late Payment Fees (Thompson)	29
14	Customer Deposits (Thompson)	31
15	Violation Reconnection Charge (Thompson)	32
16	Non-Sufficient Funds Charges (Thompson)	34
17	Proof of Adjustments (Galloway, Smith)	35
18	Close the Docket (Ames, Galloway, Smith)	36
	Schedule 1-A	37
	Schedule 1-B	38
	Schedule 2	39
	Schedule 3-A	40
	Schedule 3-B	41
	Schedule 3-C	43
	Schedule 4-A	44
	Schedule 4-B	45
	Attachment A	46

Case Background

Cedar Acres, Inc. (Cedar Acres or utility) is a Class C water utility serving approximately 319 customers in the Oakland Hills subdivision located in Sumter County. The area is in the Southwest Florida Water Management District (SWFWMD). Wastewater treatment is provided by septic tanks. According to the utility's 2014 Annual Report, total gross revenues were $35,353 and total operating expenses were $105,130, resulting in a net operating loss of $69,777.

The utility was subject to Sumter County jurisdiction when the development was designed, and Cedar Acres was established. The County turned over jurisdiction to the Florida Public Service Commission (Commission) in 1987. Unaware of the change in jurisdiction, the utility did not apply for an original certificate with the Commission until 2008. The Commission granted an original certificate and approved the existing rates and charges.[1]

On November 17, 2014, the Commission received Cedar Acres' application for a staff-assisted rate case. The instant docket is the utility's first rate case. Rate base has never been established for Cedar Acres. Likewise, rates have not changed in almost 30 years, since the utility's inception.

The Commission has the authority to consider this rate case pursuant to Section 367.0814, Florida Statutes (F.S.).

[1] Order No. PSC-09-0541-FOF-WU, issued August 4, 2009, in Docket No. 080098-WU, In re: Application for certificate to provide water service in Sumter County by Cedar Acres, Inc.

Discussion of Issues

Issue 1: Is the quality of service provided by the Utility satisfactory?

Recommendation: No. Due to the improper issuance of boil water notices and the same violations in both the 2012 and 2015 DEP sanitary surveys, staff recommends that the overall quality of service for the Cedar Acres water system in Sumter County is unsatisfactory. In addition, staff recommends a decrease to the President's salary as discussed in Issue 6 of this recommendation. (Mtenga)

Staff Analysis: Pursuant to Rule 25-30.433(1), F.A.C., in water and wastewater rate cases, the Commission shall determine the overall quality of service provided by the utility. This is derived from an evaluation of three separate components of the utility operations. These components are the quality of the utility's product, the operating conditions of the utility's plant and facilities, and the utility's attempt to address customer satisfaction. The rule further states that sanitary surveys, outstanding citations, violations, and consent orders on file with the Department of Environmental Protection (DEP) and the county health department over the preceding three-year period shall be considered. In addition, input from the DEP and health department officials and customer comments or complaints over the preceding five-year period shall be considered pursuant to Section 367.0812(1)(c), F.S.

Quality of Utility's Product and Operating Conditions of the Utility's Plant and Facilities.

Cedar Acres is located in the Oakland Hills subdivision in Lady Lake, Florida. The raw source water is ground water which is obtained from two wells in the service area and is treated. The processing sequence for the water treatment system is to pump raw water from the aquifer, inject liquid chlorine, store in a tank and then distribute.

The last Sanitary Survey Report by DEP was dated July 14, 2015. Five deficiencies were noted by DEP. There was no signed and sealed report documenting a tank inspection for the 5,000 gallon hydro-pneumatic tank; no emergency preparedness/response plan available for review; no cross connection control panel plan on file; no record that the calibration of the finished drinking water flow meter had been checked and the well pedestal was damaged. All of these deficiencies were also found in the previous sanitary survey conducted by DEP in 2012. Besides a documented tank inspection, the utility has not corrected the other deficiencies according to DEP.

A recent incident with the utility in July of 2015 has called into question the operations of Cedar Acres. The utility experienced a power failure as a result of non-payment of its electric bills. The utility had switched from receiving paper to electronic billing and had missed the notices for disconnection. As a result of the disconnection the backup generator turned on but did not alert the operator that it was operating. As a result, the generator ran out of fuel and the water pressure decreased, resulting in the issuance of a boil water notice to the community. In staff's investigation of the event, we found that the utility is not in compliance with Department of Health and DEP standards for the issuances of boil water notices. Some customers had noted that they had not received boil water notices and in fact never receive boil water notices from the utility. The utility has a practice of posting one sign at the entrance of the community. The Department of Health requires boil water notices to be issued either through radio or television stations that broadcast in the area, consistent with Rule 62-560.410(1)(a)(1), F.A.C., telephoned, such as reverse 911, or hand-delivered to all affected residents and businesses as soon as possible. The utility has been informed of its improper practice and stated it will change the protocol in future incidences. DEP was notified of the incident and inspected the facilities again in mid-August 2015. They gave notice to the utility to fix the issues with the generator by August 27, 2015, which the utility has not fixed to date.

The Utility's Attempt to Address Customer Satisfaction.

Staff reviewed the Commission's complaint records and there were four complaints recorded in the last five years. All four complaints identified improper billing and stated no billing details appeared on the bill. The utility has since changed the company that handles its billing and those issues have been resolved. Staff asked the Utility for a copy of its in-house complaints during the test year and the utility responded that it did not receive any complaints.

Staff conducted a customer service meeting on May 14, 2015. This meeting gave the customers an opportunity to express specific concerns regarding the utility's attitude and responsiveness to quality of service issues. All quality of service complaints were investigated and taken into consideration during the preparation of staff's final recommendation.

The customer service meeting was held in Lady Lake, Florida. Thirty-eight customers attended the meeting and nine customers spoke. All of the customers who spoke at the meeting and who wrote letters subsequently were primarily concerned with the rate increase itself. There was only one customer complaint addressing secondary water quality issues such as taste and odor. The utility is currently in compliance with all primary and secondary water standards set by the DEP.

The utility's customer complaints have been minimal and mostly in regards to improper billing which staff found to be associated with previous management. However, the incident in July 2015 showcased a major DEP compliance issue with improper boil water notice issuance. Also, the utility had the same violations on both the 2012 and 2015 DEP sanitary surveys. Because of these two issues, staff recommends that the overall quality of service for the Cedar Acres water system is unsatisfactory. In addition, staff recommends a decrease to the President's salary as discussed in Issue 6 of this recommendation.

Issue 2: What is the used and useful percentage of Cedar Acres' water treatment plant and water distribution system?

Recommendation: Cedar Acres' water treatment plant and water distribution system should be considered 100 percent used and useful (U&U). There is zero excessive unaccounted for water (EUW), therefore, no adjustment to chemicals and purchased power expense is recommended. (Mtenga)

Staff Analysis: The distribution system is a network of approximately 14,170 linear feet of 4, 6, and 8-inch pipe. According to the utility, there are no fire hydrants in the subdivision. The utility's water treatment plant consists of two wells, one 8 inch well rated 300 gallons per minute (gpm) and a second 5 inch well rated at 90 gpm for a total capacity of 390 gpm. Each well has a 5,000-gallon hydro-pneumatic tank for pressurization and a hypo-chlorination system is used for disinfection.

Excessive Unaccounted for Water

Rule 25-30.4325, F.A.C., describes EUW as unaccounted for water in excess of 10 percent of the amount produced or purchased. When establishing the rule, the Commission recognized that some uses of water are readily measureable and others are not. Unaccounted for water is all produced or purchased water that is not sold, metered or accounted for in the records of a utility. The rule provides that to determine whether adjustments to plant and operating expenses, such as purchased power and chemicals are necessary, the Commission will consider all relevant factors as to the reason for EUW. The relevant factors include solutions implemented to correct the problem or whether a proposed solution is economically feasible. The unaccounted for water is calculated by subtracting both the gallons used for services, such as flushing, and the gallons sold to customers from the total gallons pumped or purchased for the test year.

According to the utility's application, Cedar Acres pumped 24,655,000 gallons of water and sold 22,190,000 gallons of water to customers. The result [(24,655,000-22,190,000)÷24,655,000] for unaccounted for water is 10 percent, which means there is EUW of zero percent. Staff reviewed the utility's 2013 Annual Report and monthly operating reports to verify what was provided in the application and recommends no adjustment be made to O&M expenses.

Used and Useful (U&U)

Pursuant to Rule 25-30.4325, F.A.C., the U&U percentage of the WTP was calculated by taking the single maximum day in the test year less the EUW times two, then adding the fire flow allowance plus the growth allowance, then dividing the whole amount by the firm reliable capacity (([2 x (single maximum day-EUW)] + fire flow + growth allowance)/ firm reliable capacity). The utility has two wells with a total capacity of 390 gpm. If a water system has more than one well, the highest capacity well should be removed from the calculation to determine the plant's firm reliable capacity. By taking one of the wells (300 gpm) out of service, the utility reflected a firm reliable capacity of 90 gpm. The single maximum day in the test year was 141,600 gallons (98 gpm) which occurred on January 14, 2014. This does not appear to have been caused by a line break or other unusual occurrence that day. The utility's records indicated unaccounted for water of 10 percent, which would mean there is an EUW of zero percent. The growth allowance is 5 gpm. The fire flow allowance is zero. The result, [(2*(98-0)+0+5)/90= 228%] is greater than 100 percent U&U. There has been no prior rate case for this utility;

therefore, U&U has not been previously established by the Commission. The utility's distribution system has not experienced growth over the last several years and is fully utilized by existing customers. Based on the above information, Cedar Acres' water treatment plant and water distribution system should be considered 100 percent used and useful (U&U). There is zero excessive unaccounted for water, therefore, no adjustment to chemicals and purchased power expense is recommended.

Issue 3: What is the appropriate average test year rate base for Cedar Acres?

Recommendation: The appropriate average test year rate base for Cedar Acres is $64,137. (Galloway)

Staff Analysis: The appropriate components of the utility's rate base include utility plant-in-service, land, accumulated depreciation, and working capital. Staff selected a test year ended September 30, 2014, for this rate case. A summary of each component and the adjustments follows:

Utility Plant-in-Service (UPIS)

The utility recorded $364,356 in UPIS. The utility was not able to provide supporting documentation for this amount. Staff reviewed Cedar Acres' general ledger, invoices, and tax returns to calculate the balance for UPIS. Based on this information, the recommended UPIS is $57,019. This represents a reduction of $307,337.

Land

Cedar Acres recorded $47,740 in land. Cedar Acres purchased 217 acres of land on June 10, 1983, of which two parcels, a total of 4.34 acres, were dedicated to public service for use by the utility. Based on documentary stamps affixed on the deed, the price paid per acre was $1,023, resulting in a land value of $4,440 ($1,023*4.34 acres). Staff reduced land by $43,300 ($47,740-$4,440) to reflect the original cost when devoted to public use. Upon further review, staff determined that one of the two parcels is no longer being used for utility purposes. Therefore, staff recommends that land be reduced by an additional $2,220 resulting in a recommended balance of $2,220 ($4,440-$2,220).

Non-Used and Useful Plant

As discussed in Issue 2 of this recommendation, Cedar Acres' water treatment plant and distribution system are 100 percent U&U. Therefore, a non-U&U adjustment is not necessary.

Accumulated Depreciation

Cedar Acres recorded $275,116 for accumulated depreciation. Staff has calculated accumulated depreciation using the prescribed rates set forth in Rule 25-30.140, F.A.C. This resulted in a decrease of $266,912 to test year accumulated depreciation. In addition, staff decreased this account by $1,327 ($2,653÷2) to reflect an averaging adjustment. The aforementioned adjustments result in average accumulated depreciation of $6,877 ($275,116-$266,912-$1,327).

Contributions-in-Aid-of-Construction (CIAC)

Cedar Acres did not record any CIAC. The utility stated that there is no CIAC nor has there ever been any CIAC. The tariff on file with the Commission includes no specified service availability charges. Thus, no adjustment is necessary to CIAC.

Amortization of CIAC

Cedar Acres did not record any amortization of CIAC. As stated above, the utility did not record any CIAC. Therefore, no adjustment is necessary to amortization of CIAC.

Working Capital Allowance

Cedar Acres did not record any working capital allowance. Working capital is defined as the investor-supplied funds necessary to meet operating expenses or going-concern requirements of a utility. Consistent with Rule 25-30.433(2), F.A.C., staff recommends that the one-eighth of the operation and maintenance (O&M) expense formula approach be used for calculating a working capital allowance. Applying this formula, staff recommends a working capital allowance of $11,775 (based on O&M expense of $94,198).

Rate Base Summary

Based on the foregoing, staff recommends that the appropriate test year average rate base is $64,137. Rate base is shown on Schedule No. 1-A, and staff's adjustments are shown on Schedule No. 1-B.

Issue 4: What is the appropriate rate of return on equity and overall rate of return for Cedar Acres?

Recommendation: The appropriate return on equity (ROE) is 8.74 percent with a range of 7.74 percent to 9.74 percent. The appropriate overall rate of return is 8.74 percent. (Galloway, Smith)

Staff Analysis: In its capital structure, the utility included common stock, retained earnings and related-party debt. Staff could not verify the amounts of common stock and retained earnings. Therefore, the common stock balance in the amount of $9,500 and retained earnings in the amount of ($118,986) were removed from the utility's capital structure.

It is Commission practice that, regarding related-party debt, when no interest or scheduled payments for principal are being made, the debt is considered common equity.[2] Staff has adjusted the utility's capital structure to reflect the related-party debt as common equity pursuant to Commission practice. This adjustment results in a common equity balance of $232,445.

The utility's capital structure has been reconciled with staff's recommended rate base. Consistent with the Commission-approved leverage formula currently in effect, the appropriate ROE is 8.74 percent.[3] Staff recommends an ROE of 8.74 percent with a range of 7.74 percent to 9.74 percent, and an overall rate of return of 8.74 percent. The ROE and overall rate of return are shown on Schedule No. 2.

[2]Order Nos. PSC-13-0140-PAA-WU, issued March 25, 2013, in Docket No. 120183-WU, In re: Application for staff assisted rate case in Lake County by TLP Water, Inc.; PSC-12-0410-PAA-SU, issued August 13, 2012, in Docket No. 110165-SU, In re: Application for staff-assisted rate case in Highlands County by Utility Corporation of Florida, Inc.; and PSC-10-0681-PAA-WU, issued November 15, 2010, in Docket No. 090414-WU, In re: Application for staff-assisted rate case in Polk County by Pinecrest Ranches, Inc.

[3]Order Nos. PSC-14-0272-PAA-WS, issued May 29, 2014, and PSC-14-0323-CO-WS, issued June 24, 2014, in Docket No. 140006-WS, In re: Water and Wastewater Industry Annual Reestablishment of Authorized Range of Return on Common Equity for Water and Wastewater Utilities Pursuant to Section 367.081(4)(f), Florida Statutes.

Issue 5: What are the appropriate test year revenues for the utility's water system?

Recommendation: The appropriate test year revenues for Cedar Acres' water system are $35,451. (Thompson)

Staff Analysis: The utility's test year is October 2013 to September 2014 and revenues are only recorded at the end of each calendar year. For that reason, Cedar Acres' last recorded revenues were $28,638 as of December 31, 2013. Based on staff's review of the utility's test year billing determinants and the rates that were in effect during the test year, staff determined that the test year revenues should be increased by $6,764.

In addition, during the test year, there were numerous meters that were not read due to various issues. Therefore, the test year gallons were understated. In order to determine the appropriate gallons for ratesetting purposes, staff believes it is appropriate to use 90 percent of the test year water gallons pumped, which is 22,190,000 gallons. The billed test year gallons were 21,118,000, resulting in a difference of 1,072,000 gallons. Staff believes it is appropriate to impute the 1,072,000 gallons and the associated revenue of $49 due to the unread meters. It should be noted that in Issue 6 staff is recommending a meter replacement program as a remedy to the various meter issues. Based on the above, staff recommends that the appropriate test year revenues for Cedar Acres' water system are $35,451 ($28,638+$6,764+$49). Test year revenues are shown on Schedule No. 3-A.

Issue 6: What is the appropriate amount of operating expense?

Recommendation: The appropriate amount of operating expense for Cedar Acres is $106,003. (Smith)

Staff Analysis: Cedar Acres recorded operating expense of $102,803 for the test year ended September 30, 2014. The test year O&M expenses have been reviewed. Invoices, canceled checks, and other supporting documentation have been examined. Staff has made several adjustments to the utility's operating expenses as summarized below:

Operation and Maintenance (O&M) Expenses

Salaries and Wages - Employees (601)

Cedar Acres recorded $50,837 for Salaries and Wages – Employees expense. This amount includes the salary for the utility's Finance Manager. The Finance Manager's duties and responsibilities include general bookkeeping and accounting for the utility along with financial reporting and ensuring compliance with utility regulations. Other duties include responding to customer inquiries and coordinating utility maintenance, as well as coordinating the meter reading and billing functions with the third-party company who performs this work every other month. The utility provided recent W-2 forms for support documentation of the salaries and wages for the Finance Manager. Based on that information, the Finance Manager's salary was increased by $1,086 to reflect the appropriate test year amount, resulting in a salary of $51,923.

In the audit workpapers along with responses to data requests, the utility indicated that the Finance Manager spends 10 percent of her time on bookkeeping duties for non-utility business. It was also noted that she spends approximately one hour per week answering phones for another related-party business in the same building. Staff is therefore basing her salary on a 35-hour week.

Staff used the 2012 AWWA Water Utility Compensation Survey (Survey) to develop a range of salaries that best fit the duties performed by the Finance Manager. Staff indexed these salaries to 2015 using the Commission-approved indices from 2013-2015. Since some or parts of some of the duties listed in the Survey are contracted out by Cedar Acres, staff is recommending a salary for the Finance Manager equal to the average of the minimum salaries in the survey adjusted for a 35-hour week. This results in a recommended annual salary of $38,938, which represents a net reduction of $11,899 ($51,923-$38,938).

Salaries and Wages – Officers (603)

The utility recorded $1,350 in this account for director's fees. Cedar Acres has a Board of Directors and an associated annual meeting to discuss utility matters. The allowance for director's fees is in line with prior Commission decisions. In a 2010 rate case for Lighthouse Utilities Company, the Commission allowed $18,000 for three directors.[4] Staff believes the recorded amount for this utility is reasonable and prudent.

[4] Order No. PSC-11-0368-PAA-WU, issued September 1, 2011, in Docket No. 100128-WU, In re: Application for increase in water rates in Gulf County by Lighthouse Utilities Company, Inc.

Additionally, the utility recorded no salaries or wages for the utility President. Because the President spends approximately five hours per week on various utility-related issues, as well as being on-call on weekends, staff believes a salary for the President is appropriate.

An hourly wage of $14.86 was approved in Docket No. 100471-SU.[5] Staff used this hourly rate due to the similar amount of hours worked and the duties performed, which comports to a 1993 First District Court of Appeals (DCA) decision.[6] The First DCA stated that: "[i]n determining whether an executive's salary is reasonable compared to salaries paid to other company executives, the comparison must, at the minimum, be based on a showing of similar duties, activities, and responsibilities in the person receiving the salary."[7] Staff indexed this amount through 2015 ($14.86*1.072039 = $15.93)[8] and allowed 260 hours annually. Therefore, staff has included an annual salary of $4,142 (260*$15.93) for the President. However, based on staff's recommendation of unsatisfactory quality of service in Issue 1, we are reducing the amount of this salary by 25 percent or $1,036 ($4,142*.25). This reduction results in a recommended salary for the president of $3,106 ($4,142-$1,036). Staff is recommending a total amount of $4,456 ($1,350+$3,106) for Salaries and Wages – Officers expense.

Purchased Power (615)

The utility recorded $3,449 for purchased power. Staff decreased this account by $226 for non-utility expenses related to a lighted sign for the subdivision. The utility also recorded charges for an electric meter that runs a pump at a well site that is no longer in use. The total for that meter was $148. Therefore, staff decreased this account by $374 ($226+$148) to reflect the appropriate amount for purchased power.

Contractual Service – Professional (631)

The utility recorded $15,967 in this account. Staff reduced this account by $3,488 for temporary office help. Staff also removed $985 for income tax preparation related to 2012 Income Taxes. Additionally, staff removed $2,855 ($2,100+$425+$330) related to Annual Report preparation that is non-recurring. However, staff believes these services were prudent and necessary due to the poor condition of the utility's books and records. Consistent with Commission practice, staff is recommending amortizing these amounts over five years. This results in an increase to this account of $1,466 [($3,488+$2,855+$985)÷5].

The utility was found to have approximately 30 meters that require immediate replacement. Staff recommends the implementation of a meter replacement program. The meters will cost $180/meter to replace. The utility will replace 32 meters a year for a total of 320 meters in ten years. Staff recommends that funds for the meter replacement program need to be collected in an escrow account at the rate of $5,760 a year. Staff believes the implementation of such an escrow

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[5] Order No. PSC-11-0444-PAA-SU, issued October 7, 2011, in Docket No. 100471-SU, In re: Application for staff-assisted rate case in Marion County by S & L Utilities, Inc.

[6] Sunshine Utilities of Central Florida v. Florida Public Service Commission, 624 So. 2d 306 (Fla. 1st DCA 1993)

[7] In reaching its decision, the First DCA cited Metropolitan Dade County Water & Wastewater Bd. v. Community Utilities Corp., 200 So. 2d 831, 833 (Fla. 3d DCA 1967)

[8] Specifically, the Commission price indices used were 2.41 percent for 2012, 1.63 percent for 2013, 1.41 percent for 2014, and 1.57 percent for 2015.

program will provide extra protections to the customers and ensure the completion of the meter replacement program by the utility.

Therefore, staff is recommending a total amount of $15,865 ($15,967-$3,488-$985-$2,855+$1,466+$5,760) for Contractual Services-Professional. This represents a reduction of $102 ($15,967-$15,865).

Contractual Service – Testing (635)

Cedar Acres recorded $2,866 for Contractual Services – Testing. The utility provided invoices to support the testing costs for the test year. Staff has decreased this account by $595 to reflect an invoice that was paid twice. Staff has increased this account by $885 to reflect a three-year amortization of DEP tri-annual testing ($2,655÷3). Therefore, staff recommends Contractual Services – Testing expense of $3,156 ($2,866-$595+$885).

Rents (640)

The utility recorded no rent expense in the test year. However, Cedar Acres shares office space with J.S.R. Company, a related party. According to the staff audit report, Cedar Acres uses approximately 25 percent of the total office space. The total monthly rent is $3,048 resulting in the utility's monthly rent expense of $762 ($3,048*.25). Therefore, staff is recommending an annual allowance for rent expense in the amount of $9,144 ($762*12).

Regulatory Commission Expense (665)

Cedar Acres did not record any regulatory commission expenses. By Rule 25-22.0407, F.A.C., the utility is required to mail notices of the customer meeting and notices of final rates in this case to its customers. Notices for the customer meeting were included in the customer's bills. Therefore, the only expense associated with the customer meeting notice was $128 for copies. For the notice of final rates, staff has estimated $156 for postage expense, $64 for printing expense, and $16 for envelopes. These amounts result in $364 ($128+$156+$64+$16) for postage, copying, and envelopes. Additionally, the utility paid a $1,000 rate case filing fee. Based on the above, staff recommends that total rate case expense is $1,364 which, amortized over four years is $341 annually.

Miscellaneous Expense (675)

Cedar Acres recorded $5,021 for miscellaneous expense. This account includes lawn care and maintenance, telephone, licenses and fees, along with other incidentals. Staff removed $18 from this account to reflect an unsupported amount.

The utility recorded $1,950 for lawn maintenance during the test year. Staff is recommending two adjustments associated with lawn maintenance. The first is a reduction of $150 for work done on a lot in Oakland Hills that is owned by Cedar Acres, Inc., but is not used for utility business ($1,950-$150=$1,800). The second adjustment is to remove half of the remaining expense for the well site that is no longer being used. Therefore, staff is recommending a further reduction of $900 ($1,800÷2) to lawn maintenance expense.

The utility did not record any expenses related to tank maintenance during the test year. However, staff has verified an invoice for tank maintenance dated July 21, 2015, in the amount of $1,800. Staff has verified an additional invoice, dated August 12, 2015, for external tank painting in the amount of $690. The utility also performed maintenance on their backup generator and water mains. These amounts were $420 and $1,463, respectively. Consistent with Commission practice of amortizing non-recurring expenses over five years, staff is including one-fifth, or $875 [($1,800+$690+$420+$1,463)÷5], in this account.

Through a data request, staff learned that the utility does not own a computer or printer but was borrowing one from an associated company in the same office building. Also, the software it was using on that computer is in need of updating. Normally, these items would be capitalized into rate base. Because staff is recommending the Operating Ratio Method in this case, staff recommends expensing these items. Staff is recommending $500 for a computer and $150 for a printer/copier. Both of these items should be amortized over six years in keeping with Commission depreciation rates. This results in an increase of $108 [($500+$150]÷6) to this account.

Further, staff is recommending increasing this account by $150 to reflect the purchase of updated operating software. This amount represents a monthly fee of $12.50. The utility is also requesting $1,416 for new accounting software. Staff believes this amount is prudent because it will aid the utility in its record keeping. Rule 25-30.433(8), F.A.C, states that "[n]on-recurring expenses shall be amortized over a five-year period unless a shorter or longer period of time can be justified." Staff is recommending amortizing this amount over five years, in accordance with Rule 25-30.433(8), F.A.C. The resulting increase is $283 ($1,416÷5) to this account.

In conclusion, staff is recommending total miscellaneous expense of $5,369 ($5,021-$18-$150-$900+$875+$108+$150+$283). This is an overall increase of $348.

O&M Expenses Summary

Total adjustments to O&M expense result in an increase of $854. Staff's recommended O&M expense is $94,198. O&M expenses are shown on Schedules No. 3-A and No. 3-C.

Depreciation Expense (Net of Related Amortization of CIAC)

Cedar Acres recorded $7,117 in its general ledger for net depreciation expense. Staff has recalculated this amount based on plant items that could be supported through proper records. Using the prescribed rates set forth in Rule 25-30.140, F.A.C., staff is recommending net depreciation expense of $2,653. This amount results in a reduction to net depreciation expense of $4,464 ($7,117-$2,653).

Taxes Other Than Income (TOTI)

Cedar Acres recorded $2,342 for TOTI. Staff is reducing property taxes by $12 for the parcel of land associated with the unused well site. Cedar Acres recorded $1,030 for payroll taxes. Based on staff's recommended combined level of Salaries and Wages expense, staff has calculated payroll taxes of $3,946. Accordingly, staff has increased payroll taxes by $2,916.

Cedar Acres recorded $1,289 for regulatory assessment fees (RAFs). Based on staff's recommended test year revenues of $35,451, the utility's RAFs should be $1,596. Staff has increased this account by $307 to reflect the appropriate RAFs. As discussed in Issue 7, revenues have been increased by $79,972 to reflect the change in revenue required to cover expenses and afford the utility a 10 percent margin over its operating expenses. As a result, TOTI should be increased by $3,599 to reflect RAFs of 4.5 percent on the recommended incremental change in revenues. Staff recommends TOTI of $9,152 ($2,342-$12+$2,916+$307+$3,599).

Income Tax

The utility did not record any income tax expense for the test year. Cedar Acres has shown a net loss for the last several years in its Annual Reports and income tax returns. This tax loss carry-forward is in excess of the income tax provision on a going-forward basis, and is expected to continue to be so for at least the next 10 years. In this instance, it is Commission practice to allow no provision for income tax.[9] Therefore, staff is not recommending any income tax provision.

Operating Expenses Summary

The application of staff's recommended adjustments to Cedar Acres' recorded test year operating expenses result in staff's recommended operating expenses of $106,003. Operating expenses are shown on Schedule No. 3-A. The related adjustments are shown on Schedule No. 3-B.

[9] Order Nos. PSC-10-0124-PAA-WU, issued March 1, 2010, in Docket No. 090244-WU, In re: Application for staff-assisted rate case in Lake County by TLP Water, Inc.; and PSC-09-0790-PAA-WU, issued November 30, 2009, in Docket No. 090170-WU, In re: Application for staff-assisted rate case in Lee County by Mobile Manor Water.

Issue 7: Should the Commission utilize the operating ratio methodology as an alternative means to calculate the revenue requirement for Cedar Acres, and, if so, what is the appropriate margin?

Recommendation: Yes, the Commission should utilize the operating ratio methodology for calculating revenue requirement for Cedar Acres. The margin should be 10 percent of O&M expenses. (Galloway)

Staff Analysis: Section 367.0814(9), F.S., provides that the Commission may, by rule, establish standards and procedures for setting rates and charges of small utilities using criteria other than those set forth in Sections 367.081(1), (2)(a), and (3), F.S. Further, Rule 25-30.456, F.A.C., provides, in part, as an alternative to a staff-assisted rate case as described in Rule 25-30.455, F.A.C., that water utilities whose total gross annual operating revenues are less than $275,000 per system may petition the Commission for staff assistance using alternative rate setting.

Although the utility did not petition the Commission for alternative rate setting under the aforementioned rule, staff believes the Commission should exercise its discretion to employ the operating ratio methodology to set rates in this case. The operating ratio methodology is an alternative to the traditional calculation of revenue requirements. Under this methodology, instead of applying a return on the utility's rate base, the revenue requirement is based on Cedar Acres' O&M expenses plus a margin. This methodology has been applied in cases that satisfy the qualifying criteria discussed below and cases in which the traditional calculation of the revenue requirement would not provide sufficient protection against potential variances in revenues and expenses.

By Order No. PSC-96-0357-FOF-WU, the Commission, for the first time, utilized the operating ratio methodology as an alternative means for setting rates.[10] This order also established criteria to determine the use of the operating ratio methodology and a guideline margin of 10 percent of O&M expenses. This criterion was applied again in Order No. PSC-97-0130-FOF-SU.[11] Most recently, the Commission approved the operating ratio methodology for setting rates in Order No. PSC-13-0327-PAA-SU.[12]

By Order No. PSC-96-0357-FOF-WU, the Commission established criteria to determine whether to utilize the operating ratio methodology for those utilities with low or non-existent rate base. The qualifying criteria established by Order No. PSC-96-0357-FOF-WU and how they apply to the utility are discussed below:

(1) Whether the utility's O&M expenses exceeds rate base. The operating ratio method substitutes O&M expenses for rate base in calculating the amount of return. A utility generally

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[10] Issued March 13, 1996, in Docket No. 950641-WU, In re: Application for staff-assisted rate case in Palm Beach County by Lake Osborne Utilities Company, Inc.

[11] Issued February 10, 1997, in Docket No. 960561-SU, In re: Application for staff-assisted rate case in Citrus County by Indian Springs Utilities, Inc.

[12] Issued July 16, 2013, in Docket No. 120270-SU, In re: Application for staff-assisted rate case in Polk County by West Lakeland Wastewater, LLC.

would not benefit from the operating ratio method if rate base exceeds O&M expenses. The decision to use the operating ratio method depends partly on the determination of whether the primary risk resides in capital costs or operating expenses. In the instant case, the rate base is less than the level of O&M expenses. The utility's primary risk resides with covering its operating expense. Based on the staff's recommendation, the adjusted rate base for the test year is $64,137, while adjusted O&M expenses are $94,198.

(2) Whether the utility is expected to become a Class B utility in the foreseeable future. Pursuant to Section 367.0814(9), F.S., the alternative form of regulation being considered in this case only applies to small utilities with gross annual revenue of $275,000 or less. Cedar Acres is a Class C utility and the recommended revenue requirement of $115,423 is substantially below the threshold level for Class B status ($200,000 per system). The utility's service area has not had any significant growth in the last five years. Therefore, staff believes the utility will not become a Class B utility in the foreseeable future.

(3) Quality of service and condition of plant. As discussed in Issue 1, staff recommends that the overall quality of service for the utility is unsatisfactory. Unsatisfactory quality contributes to staff's belief that operating ratio methodology is appropriate for this utility. It highlights the need for an adequate revenue stream in order to provide funds for improvements and repairs as deemed prudent and necessary.

(4) Whether the utility is developer-owned. Some of the current utility owners are associated with the original developer. However, as stated earlier, this utility was established almost 30 years ago. There has been no significant growth in years, and the development is very close to being built out. Staff doesn't anticipate any significant growth in the foreseeable future.

(5) Whether the utility operates treatment facilities or is simply a distribution and/or collection system. The issue in general is whether purchased water and/or wastewater costs should be excluded in the computation of the operating margin. Cedar Acres operates the water treatment plant. Therefore, there is no concern regarding excluding purchased water or wastewater costs.

Based on staff's review of the utility's situation relative to the above criteria, staff recommends that Cedar Acres is a viable candidate for the operating ratio methodology.

By Order Nos. PSC-96-0357-FOF-WS and PSC-97-0130-FOF-WU, the Commission determined that a margin of 10 percent shall be used unless unique circumstances justify the use of a greater or lesser margin. The important question is not what the percentage should be, but what level of operating margin will allow the utility to provide safe and reliable service and remain a viable entity. In order to answer this question, the particular circumstances of the utility must be reviewed and considered thoroughly.

Several factors must be considered in determining the reasonableness of a margin. First, the margin must provide sufficient revenue for the utility to cover its interest expense. However, in this case, the utility is not paying interest expense.

Second, use of the operating ratio methodology rests on the contention that the principal risk to the utility resides in operating costs rather than in cost of the plant. The fair return on a small rate base may not adequately compensate the utility owner for incurring the risk associated with covering the much larger operating cost. Therefore, staff believes the margin should adequately compensate the utility owner for the principal risk which lies with the operating costs.

Third, if the return on rate base method was applied, Cedar Acres could be left with insufficient funds to cover operating expenses. Therefore, the margin should provide adequate revenue to protect against potential variability in revenue and expenses. The return on rate base would provide the utility with slightly less than 60 percent of the return provided by operating ratio methodology.[13] If the utility's operating expenses increase or revenues decrease, Cedar Acres would not have the funds required for day-to-day operations.

In conclusion, staff believes the above factors show that the utility needs a higher margin of revenue over operating expenses than the traditional return on rate base method would allow. Therefore, in order to provide Cedar Acres with adequate cash flow to provide some assurance of safe and reliable service, staff recommends application of the operating ratio methodology at a margin of 10 percent of O&M expenses for determining the revenue requirement.

[13]The operating margin using operating ratio methodology equals $9,420 and the return on investment using rate base methodology equals $5,606.

Issue 8: What is the appropriate revenue requirement?

Recommendation: The appropriate revenue requirement is $115,423. (Galloway, Smith)

Staff Analysis: Cedar Acres should be allowed an annual revenue increase of $79,972 (225.59 percent) for water. This will allow the utility the opportunity to recover its expenses and generate a 10-percent margin as discussed in Issue 7. As noted earlier in other issues, this docket is the utility's first rate case since its inception. It is the first rate change since rates were originally set by Sumter County in the mid 1980s, almost 30 years ago. Staff's revenue requirement calculation is shown on Table 8-1 below:

Table 8-1

	Water
Adjusted O&M expense	$94,198
10-Percent Margin (%)	x .1000
10-Percent Margin ($)	$9,420
Adjusted O&M expense	94,198
Depreciation expense (Net)	2,653
Amortization	0
Taxes Other Than Income	9,152
Income Taxes	0
Revenue Requirement	$115,423
Less Test Year Revenues	35,451
Annual Increase	$79,972
Percent Increase/(Decrease)	225.59%

Issue 9: What are the appropriate rate structure and rates for Cedar Acres' water system?

Recommendation: The recommended rate structure and monthly water rates are shown on Schedule Nos. 4-A and 4-B. The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days of the date of the notice. (Thompson)

Staff Analysis: The Cedar Acres water system is located in Sumter County within the Southwest Florida Water Management District. The utility provides water service to approximately 319 residential customers. The percentage of residential zero gallon customer bills reflected during the test year indicates a non-seasonal customer base. The average residential water demand is approximately 5,797 gallons per month. Currently, the utility's rate structure consists of a monthly base facility charge (BFC) of $9.00 for all meter sizes and a uniform gallonage charge of $.045 per 1,000 gallons, which is billed bi-monthly.

Staff performed an analysis of the utility's billing data in order to evaluate various BFC cost recovery percentages and the appropriate rate structure for the residential water customers. The goal of the evaluation was to select the rate design parameters that: (1) produce the recommended revenue requirement; (2) equitably distribute cost recovery among the utility's customers; and (3) implement, where appropriate, water conserving rate structures consistent with Commission practice.

Staff recommends that 40 percent of the water revenues should be generated from the BFC, which will provide sufficient revenues to design a uniform gallonage charge that will encourage conservation. Based on a recommended revenue increase of 225.59 percent, the residential consumption can be expected to decline by 6,482,000 gallons resulting in anticipated average residential demand of 4,103 gallons per month. Staff recommends a 29.2 percent reduction in test year residential gallons for ratesetting purposes and corresponding reductions of $898 for purchased power, $431 for chemicals, and $63 for RAFs to reflect the anticipated repression, which results in a post repression revenue requirement of $114,031.

Further, staff recommends that the customers continue to be billed on a bi-monthly basis to avoid the additional costs associated with reading meters and billing on a monthly basis. Based on the foregoing, staff recommends 40 percent of the water revenues be generated from the BFC. The traditional BFC and uniform gallonage charge rate structure should be approved for all water customers and billed on a bi-monthly basis. A 29.2 percent reduction in test year residential gallons and corresponding reductions of $898 for purchased power, $431 for chemicals, and $63 for RAFs should be made to reflect the anticipated repression. Staff's recommended rate structure and rates are shown on Schedule Nos. 4-A and 4-B. Staff also presents two alternate rate structures to illustrate other BFC allocations.

The recommended rate structure and rates are shown on Schedule Nos. 4-A and 4-B. The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days of the date of the notice.

Issue 10: What is the appropriate amount by which rates should be reduced in four years after the published effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816 F.S.?

Recommendation: The water rates should be reduced as shown on Schedule No. 4-B, to remove rate case expense grossed-up for regulatory assessment fees and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the four-year rate case expense recovery period, pursuant to Section 367.0816, F.S. Cedar Acres should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense. (Thompson, Smith)

Staff Analysis: Section 367.0816, F.S., requires that the rates be reduced immediately following the expiration of the four-year period by the amount of the rate case expense previously included in rates. The reduction will reflect the removal of revenue associated with the amortization of rate case expense, the associated operating margin, and the gross-up for RAFs. The total reduction is $393 for water.

The water rates should be reduced as shown on Schedule No. 4-B to remove rate case expense grossed-up for regulatory assessment fees and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the four-year rate case expense recovery period, pursuant to Section 367.0816, F.S. Cedar Acres should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.

Issue 11: What are the appropriate amount, terms, and conditions for the escrow account established for the meter replacement program?

Recommendation: The utility should be required to escrow $960 every two months. The appropriate terms and conditions of the escrow account are set forth below in the Staff Analysis Section. (Galloway, Smith, Ames)

Staff Analysis: As discussed in Issue 6, staff is recommending a meter replacement program for the utility. The meter replacement program includes replacing 32 meters per year, resulting in a total annual cost of $5,760. Staff believes, and the utility has agreed, that in order to assure that the meters are replaced and the customers are protected, $960 should be escrowed bi-monthly since the utility's billing cycle is bi-monthly ($5,760÷6). Further, in order for approval of funds to be released, the utility must submit support documentation of installation of meters and associated costs. The meter replacement program is expected to be completed within ten years.

The security provided through an escrow agreement should include the following terms and conditions as part of the agreement:

(1) No monies in the escrow account may be withdrawn by the utility without the express approval of the Commission;

(2) The escrow account shall be an interest bearing account;

(3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers;

(4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to Cedar Acres;

(5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times;

(6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt;

(7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to <u>Cosentino v. Elson</u>, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments;

(8) The Commission Clerk must be a signatory to the escrow agreement; and

(9) The account must specify by whom and on whose behalf such monies were paid.

Cedar Acres should maintain a record of the amount escrowed, and the amount of revenues that are subject to refund.

Issue 12: Should the recommended rates be approved for the utility on a temporary basis, subject to refund, in the event of a protest filed by a party other than the utility?

Recommendation: Yes. Pursuant to Section 367.0814(7), F.S., the recommended rates should be approved for the utility on a temporary basis, subject to refund, in the event of a protest filed by a party other than the utility. Cedar Acres should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. Prior to implementation of any temporary rates, the utility should provide appropriate security. If the recommended rates are approved on a temporary basis, the rates collected by the utility should be subject to the refund provisions discussed below in the staff analysis. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(1), F.A.C., the utility should file reports with the Commission Clerk's Office bi-monthly, no later than the 20^{th} of the billing month, indicating the monthly and total amount of money subject to refund at the end of the preceding billing period. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund. (Smith, Thompson, Ames)

Staff Analysis: This recommendation proposes an increase in water rates. A timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the utility. Therefore, pursuant to Section 367.0814(7), F.S., in the event of a protest filed by a party other than the utility, staff recommends that the recommended rates be approved as temporary rates. Cedar Acres should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. The recommended rates collected by the utility should be subject to the refund provisions discussed below.

Cedar Acres should be authorized to collect the temporary rates upon staff's approval of an appropriate security for the potential refund and the proposed customer notice. Security should be in the form of a bond or letter of credit in the amount of $53,354. Alternatively, the utility could establish an escrow agreement with an independent financial institution.

If Cedar Acres chooses a bond as security, the bond should contain wording to the effect that it will be terminated only under the following conditions:

(1) The Commission approves the rate increase; or,

(2) If the Commission denies the increase, the utility shall refund the amount collected that is attributable to the increase.

If Cedar Acres chooses a letter of credit as a security, it should contain the following conditions:

(1) The letter of credit is irrevocable for the period it is in effect, and,

(2) The letter of credit will be in effect until a final Commission order is rendered, either approving or denying the rate increase.

If security is provided through an escrow agreement, the following conditions should be part of the agreement:

(1) No monies in the escrow account may be withdrawn by the utility without the express approval of the Commission;

(2) The escrow account shall be an interest bearing account;

(3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers;

(4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to Cedar Acres;

(5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times;

(6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt;

(7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments;

(8) The Commission Clerk must be a signatory to the escrow agreement; and,

(9) The account must specify by whom and on whose behalf such monies were paid.

In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the utility. Irrespective of the form of security chosen by Cedar Acres, an account of all monies received as a result of the rate increase should be maintained by the utility. If a refund is ultimately required, it should be paid with interest calculated pursuant to Rule 25-30.360(4), F.A.C.

Cedar Acres should maintain a record of the amount of the bond, and the amount of revenues that are subject to refund. Rule 25-30.360(6), F.A.C., requires the utility to file reports with the Commission Clerk's Office no later than the 20th of each month indicating the monthly and total amount of money subject to refund at the end of the preceding month. However, by Rule 25-30.360(1), the Commission has the authority to order alternative requirements for refunds. Cedar

Acres is on a bi-monthly billing schedule. Therefore, pursuant to Rule 25-30.360(1), staff recommends the Commission order the utility to file reports bi-monthly, no later than the 20th of the billing month, indicating the monthly amount and total amount of money subject to refund. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund.

Issue 13: Should Cedar Acres' request to implement a $5 late payment charge be approved?

Recommendation: Yes. Cedar Acres' request to implement a $5 late payment charge should be approved. Cedar Acres should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective for services rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice. The utility should provide proof of the date notice was given no less than 10 days after the date of the notice. (Thompson)

Staff Analysis: The utility is requesting a $5 late payment charge to recover the cost of supplies and labor associated with processing late payment notices. The utility's request for a late payment charge was accompanied by its reason for requesting the charge, as well as the cost justification required by Section 367.091, F.S.

The utility has a total of 319 customer accounts and, according to the utility, there are a substantial amount of customers that do not pay by the due date of each billing cycle. Based on historical data and the bi-monthly billing cycle, the utility anticipates it will prepare late payment notices for approximately 99 accounts per billing cycle. In the past, the Commission has allowed 10-15 minutes per account per month for clerical and administrative labor to research, review, and prepare the notice.[14] The utility indicated it will spend approximately 12 hours per billing cycle processing late payment notices, which results in an average of approximately 7 minutes per account (720 minutes/99 accounts) and is consistent with past Commission decisions. The late payment notices will be processed by the account manager, which results in labor cost of $4.24 (12x$35/99) per account. The cost basis for the late payment charge, including the labor, is shown below.

Table 13-1
Cost Basis for Late Payment Charge

Labor	$4.24
Printing	$0.05
Postage	$0.49
Supplies	$0.12
Total Cost	$4.90

[14]Order Nos. PSC-11-0204-TRF-SU, in Docket No. 100413-SU, issued April 25, 2011, In re: Request for approval of tariff amendment to include a late fee of $14.00 in Polk County by West Lakeland Wastewater.; PSC-08-0255-PAA-WS, in Docket No. 070391-WS, issued April 24, 2008, In re: Application for certificates to provide water and wastewater service in Sumter County by Orange Blossom Utilities, Inc.; and PSC-01-2101-TRF-WS, in Docket No. 011122-WS, issued October 22, 2001, In re: Tariff filing to establish a late payment charge in Highlands County by Damon Utilities, Inc.

Based on staff's research, since the late 1990s, the Commission has approved late payment charges ranging from $2.00 to $7.00.[15] The purpose of this charge is not only to provide an incentive for customers to make timely payment, thereby reducing the number of delinquent accounts, but also to place the cost burden of processing delinquent accounts solely upon those who are cost causers.

Based on the above, staff recommends that Cedar Acres' request to implement a $5 late payment charge should be approved. Cedar Acres should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective for services rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice. The utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

[15]Order Nos. PSC-01-2101-TRF-WS, in Docket No. 011122-WS, issued October 22, 2001, In re: Tariff filing to establish a late payment charge in Highlands County by Damon Utilities, Inc.; PSC-08-0255-PAA-WS, in Docket No. 070391-WS, issued April 24, 2008, In re: Application for certificates to provide water and wastewater service in Sumter County by Orange Blossom Utilities, Inc.; PSC-09-0752-PAA-WU, in Docket No. 090185-WU, issued November 16, 2009, In re: Application for grandfather certificate to operate water utility in St. Johns County by Camachee Island Company, Inc. d/b/a Camachee Cove Yacht Harbor Utility.; PSC-10-0257-TRF-WU, in Docket No. 090429-WU, issued April 26, 2010, In re: Request for approval of imposition of miscellaneous service charges, delinquent payment charge and meter tampering charge in Lake County, by Pine Harbour Water Utilities, LLC.; and PSC-11-0204-TRF-SU, in Docket No. 100413-SU, issued April 25, 2011, In re: Request for approval of tariff amendment to include a late fee of $14.00 in Polk County by West Lakeland Wastewater.PSC-14-0105-TRF-WS, in Docket No. 130288-WS, issued February 20, 2014, In re: Request for approval of late payment charge in Brevard County by Aquarina Utilities, Inc.

Issue 14: What are the appropriate initial customer deposits for Cedar Acres?

Recommendation: The appropriate initial customer deposit should be $60 for the residential 5/8” x 3/4" meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill for water. The utility should file revised tariff sheets consistent with the Commission’s vote. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, F.A.C. The utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding. (Thompson)

Staff Analysis: Rule 25-30.311, F.A.C., contains criteria for collecting, administering, and refunding customer deposits. Rule 25-30.311(1), F.A.C., requires that each company’s tariff shall contain their specific criteria for determining the amount of initial deposits. Cedar Acres’ current tariff does not authorize the utility to collect initial customer deposits. Customer deposits are designed to minimize the exposure of bad debt expense for the utility and, ultimately, the general body of rate payers. In addition, collection of customer deposits is consistent with one of the fundamental principles of rate making—ensuring that the cost of providing service is recovered from the cost causer.

Rule 25-30.311(7), F.A.C., authorizes utilities to collect new or additional deposits from existing customers not to exceed an amount equal to the average actual charge for water and/or wastewater service for two billing periods for the 12-month period immediately prior to the date of notice. The two billing periods reflect the lag time between the customer’s usage and the utility’s collection of the revenues associated with that usage. Commission practice has been to set initial customer deposits equal to two months bills based on the average consumption for a 12-month period for each class of customers. Staff reviewed the customer usage data and developed initial customer deposits for new residential and general service customers based on two times the average consumption.

Staff recommends that the appropriate initial customer deposit should be $60 for the residential 5/8” x 3/4" meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill for water. The utility should file revised tariff sheets consistent with the Commission’s vote. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, F.A.C. The utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding.

Issue 15: Should Cedar Acres' request for violation reconnection charges be approved?

Recommendation: Yes. Cedar Acres request for violation reconnection charges of $80 for normal hours and $105 for after hours should be approved. Cedar Acres should be required to file a proposed customer notice to reflect the Commission-approved charges. The approved charges should be effective for services rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charges should not be implemented until staff has approved the proposed customer notice. The utility should provide proof of the date notice was given no less than 10 days after the date of the notice. (Thompson)

Staff Analysis: Section 367.091, F.S., authorizes the Commission to establish, increase, or change a rate or charge other than monthly rates or service availability charges. The utility is requesting violation reconnection charges of $80 for normal hours and $105 for after hours. The utility's request for violation reconnection charges was accompanied by its reason for requesting the charges, as well as the cost justification required by Section 367.091, F.S.

Pursuant to Rule 25-30.460(1)(c), F.A.C., a violation reconnection is a charge that is levied prior to reconnection of an existing customer after discontinuance of service for cause. Commission practice has been to place the burden of such a charge on the cost causer rather than the general body of ratepayers. This is consistent with one of the fundamental principles of rate making—ensuring that the cost of providing service is recovered from the cost causer.

Cedar Acres does not have any on-site personnel to perform disconnections. Therefore, a third party vendor will be used for this function. The third party vendor's estimate reflects 2.2 hours of labor, which includes driving time of 74 miles round trip and performing the disconnection and subsequent reconnection. The third party vendor's estimate also reflects transportation cost at $0.50 per mile, which is less than the current 2015 IRS standard mileage rate of $0.575. Staff believes the utility's requested charges are reasonable and consistent with Commission decisions.[16] The utility's cost justification is summarized below in Table 15-1.

[16]Order No. PSC-09-0263-TRF-WU, in Docket No. 080562-WU, issued April 27, 2009, In re: Request for approval of amendment to connection/transfer sheets, increase in returned check charge, amendment to miscellaneous service charges, increase in meter installation charges, and imposition of new tap-in fee, in Marion County, by East Marion Sanitary Systems Inc., the Commission approved a normal hour $45 disconnection charge and a $50 reconnection charge for a combined total of $90 for the violation reconnection. The combined after hours charge was approved at $155 for the violation reconnection.

Table 15-1
Cost Basis for Violation Reconnection Charge

During Business Hours	Cost	After Hours	Cost
Labor ($20.50/hr. x 2.2 hrs.)	$ 42.10	Labor ($30.75/hr. x 2.2 hrs.)	$ 67.75
Transportation ($0.50 x 74 miles)	$ 37.00	Transportation ($0.50 x 74 miles)	$ 37.00
Total	$ 79.10	Total	$104.75

Source: Response to staff inquiry

Based on the above, Cedar Acres request for violation reconnection charges of $80 for normal hours and $105 for after hours should be approved. Cedar Acres should be required to file a proposed customer notice to reflect the Commission-approved charges. The approved charges should be effective for services rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charges should not be implemented until staff has approved the proposed customer notice. The utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

Issue 16: Should Cedar Acres be authorized to collect Non-Sufficient Funds (NSF) charges?

Recommendation: Yes. Cedar Acres should be authorized to collect NSF charges. Staff recommends that Cedar Acres revise its tariffs to reflect the NSF charges currently set forth in Sections 68.065 and 832.08(5), F.S. The NSF charges should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. Furthermore, the charges should not be implemented until staff has approved the proposed customer notice. The utility should provide proof of the date the notice was given within 10 days of the date of the notice. (Thompson)

Staff Analysis: Section 367.091, F.S., requires that rates, charges, and customer service policies be approved by the Commission. The Commission has authority to establish, increase, or change a rate or charge. Staff believes that Cedar Acres should be authorized to collect NSF charges consistent with Section 68.065, F.S., which allows for the assessment of charges for the collection of worthless checks, drafts, or orders of payment. As currently set forth in Sections 832.08(5) and 68.065(2), F.S., the following NSF charges may be assessed:

1. $25, if the face value does not exceed $50,
2. $30, if the face value exceeds $50 but does not exceed $300,
3. $40, if the face value exceeds $300,
4. or five percent of the face amount of the check, whichever is greater.

Approval of NSF charges is consistent with prior Commission decisions.[17] Furthermore, NSF charges place the cost on the cost-causer, rather than requiring that the costs associated with the return of the NSF checks be spread across the general body of ratepayers. As such, staff recommends that Cedar Acres revise its tariffs to reflect the NSF charges currently set forth in Sections 68.065 and 832.08(5) F.S. The NSF charges should be effective on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), F.A.C. In addition, the NSF charges should not be implemented until staff has approved the proposed customer notice. The utility should provide proof of the date the notice was given within 10 days of the date of the notice.

[17]Order Nos. PSC-14-0198-TRF-SU, issued May 2, 2014, in Docket No. 140030-SU, In re: Request for approval to amend Miscellaneous Service charges to include all NSF charges by Environmental Protection Systems of Pine Island, Inc., and PSC-13-0646-PAA-WU, issued December 5, 2013, in Docket No. 130025-WU, In re: Application for increase in water rates in Highlands County by Placid Lakes Utilities, Inc.

Issue 17: Should the utility be required to provide proof, within 90 days of an effective order finalizing this docket, that it has adjusted its books for all the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) associated with the Commission approved adjustments?

Recommendation: Yes. To ensure that the utility adjusts its books in accordance with the Commission's decision, Cedar Acres should provide proof, within 90 days of the final order in this docket, that the adjustments to all the applicable NARUC USOA accounts have been made to the utility's books and records. The utility's support documentation should include a list, by issue, of all Commission ordered adjustments and a reference to where the corresponding bookkeeping entries can be found in the general ledger that is provided. In an effort to assist the utility in its requirement, Attachment A provides a breakdown by primary account for plant and accumulated depreciation that reflects the year-end balances at September 30, 2014. In the event the utility needs additional time to complete the adjustments, notice should be provided within 7 days prior to deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days. (Galloway, Smith)

Staff Analysis: To ensure that the utility adjusts its books in accordance with the Commission's decision, Cedar Acres should provide proof, within 90 days of the final order in this docket, that the adjustments to all the applicable NARUC USOA accounts have been made to the utility's books and records. In an effort to assist the utility in its requirement, Attachment A provides a breakdown by primary account for plant and accumulated depreciation that reflects the year-end balances at September 30, 2014. However, in the event the utility needs additional time to complete the adjustments, notice should be provided within 7 days prior to deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days.

The utility's support documentation should include a list, by issue, of all Commission ordered adjustments and a reference to where the corresponding bookkeeping entries can be found in the general ledger that is provided. All support documentation should follow the guidelines set forth in Rule 25-30.450, F.A.C., which states:

> In each instance, the utility must be able to support any schedule submitted, as well as any adjustments or allocations relied on by the utility. The work sheets, etc., supporting the schedules and data submitted must be organized in a systematic and rational manner so as to enable Commission personnel to verify the schedules in an expedient manner and minimum amount of time. The supporting work sheets, etc., shall list all reference sources necessary to enable Commission personnel to trace to original source of entry into the financial and accounting system and, in addition, verify amounts to the appropriate schedules.

Issue 18: Should this docket be closed?

Recommendation: No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order will be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff. Also, the docket should remain open to allow staff to monitor the escrow account and the meter replacement program. Once the above actions are completed this docket will be closed administratively.
(Ames, Galloway, Smith)

***Staff Analysis*:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order will be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff. Also, the docket should remain open to allow staff to monitor the escrow account and the meter replacement program. Once the above actions are completed this docket will be closed administratively.

CEDAR ACRES, INC. TEST YEAR ENDED 09/30/14 SCHEDULE OF WATER RATE BASE			SCHEDULE NO. 1-A DOCKET NO. 140217-WU
DESCRIPTION	**BALANCE PER UTILITY**	**STAFF ADJUST. TO UTIL. BAL.**	**BALANCE PER STAFF**
1. UTILITY PLANT IN SERVICE	$364,356	(307,337)	$57,019
2. LAND & LAND RIGHTS	47,740	(45,520)	2,220
3. NON-USED AND USEFUL COMPONENTS	0	0	0
4. ACCUMULATED DEPRECIATION	(275,116)	268,239	(6,877)
5. CIAC	0	0	0
6. AMORTIZATION OF CIAC	0	0	0
7. WORKING CAPITAL ALLOWANCE	0	11,775	11,775
8. WATER RATE BASE	$136,980	($72,843)	$64,137

CEDAR ACRES, INC.	**SCHEDULE NO. 1-B**
TEST YEAR ENDED 09/30/14	**DOCKET NO. 140217-WU**
ADJUSTMENTS TO RATE BASE	
	WATER
UTILITY PLANT IN SERVICE	
To reflect appropriate plant in service.	($307,337)
LAND AND LAND RIGHTS	
1. To reflect land designated to the utility.	($43,300)
2. To remove parcel of land not used in utility business.	(2,220)
Total	($45,520)
ACCUMULATED DEPRECIATION	
1. To reflect appropriate accumulated depreciation.	$266,912
2. To reflect an average adjustment.	1,327
Total	$268,239
WORKING CAPITAL ALLOWANCE	
To reflect 1/8 of test year O & M expenses.	$11,775

CEDAR ACRES, INC.
TEST YEAR ENDED 09/30/14
SCHEDULE OF CAPITAL STRUCTURE

SCHEDULE NO. 2
DOCKET NO. 140217-WU

	CAPITAL COMPONENT	PER UTILITY	SPECIFIC ADJUST-MENTS	BALANCE BEFORE PRO RATA ADJUSTMENTS	PRO RATA ADJUST-MENTS	BALANCE PER STAFF	PERCENT OF TOTAL	COST	WEIGHTED COST
1	COMMON STOCK	$9,500	($9,500)	$0	$0	$0			
2	RETAINED EARNINGS	(118,986)	118,986	0	0	0			
3	PAID IN CAPITAL	0	0	0	0	0			
4	OTHER COMMON EQUITY	0	232,445	232,445	(168,308)	64,137			
5	TOTAL COMMON EQUITY	($109,486)	$341,931	$232,445	($168,308)	$64,137	100.00%	8.74%	8.74%
6	LONG TERM DEBT								
	NOTE PAYABLE - Related Party	217,550	(217,550)	0	0	0	0.00%	5.00%	0.00%
7	CUSTOMER DEPOSITS	0	0	0	0	0	0.00%	2.00%	0.00%
8	TOTAL	$108,064	$124,381	$232,445	($168,308)	$64,137	100.00%		8.74%

RANGE OF REASONABLENESS	LOW	HIGH
RETURN ON EQUITY	7.74%	9.74%
OVERALL RATE OF RETURN	7.74%	9.74%

CEDAR ACRES, INC.
TEST YEAR ENDED 09/30/14
SCHEDULE OF WATER OPERATING INCOME

SCHEDULE NO. 3-A
DOCKET NO. 140217-WU

		TEST YEAR PER UTILITY	STAFF ADJ. PER UTILITY	STAFF ADJUSTED TEST YEAR	ADJUST. FOR INCREASE	REVENUE REQUIREMENT
1.	**OPERATING REVENUES**	$28,638	$6,813	$35,451	$79,972	$115,423
					225.59%	
	OPERATING EXPENSES:					
2.	OPERATION & MAINTENANCE	93,344	854	94,198	0	94,198
3.	DEPRECIATION (NET)	7,117	(4,464)	2,653	0	2,653
4.	AMORTIZATION	0	0	0	0	0
5.	TAXES OTHER THAN INCOME	2,342	3,211	5,553	3,599	9,152
6.	INCOME TAXES	0	0	0	0	0
7.	**TOTAL OPERATING EXPENSES**	$102,803	($398)	$102,405	$3,599	$106,003
8.	**OPERATING INCOME/(LOSS)**	($74,165)		($66,954)		$9,420
9.	**WATER RATE BASE**	$136,980		$64,137		$64,137
10.	**OPERATING RATIO**					10.00%
	RATE OF RETURN	-54.14%		-104.39%		

	CEDAR ACRES, INC.	SCHEDULE NO. 3-B
	TEST YEAR ENDED 09/30/14	DOCKET NO. 140217-WU
	ADJUSTMENTS TO OPERATING INCOME	PAGE 1 OF 2
		WATER
	OPERATING REVENUES	
	To adjust utility revenues to audited test year amount.	$6,813
	OPERATION AND MAINTENANCE EXPENSES	
1.	Salaries and Wages - Employees (601)	
	Adjustment to annualize increased salary per audit.	$1,086
	To reduce Finance Manager's salary.	(12,985)
	Total	($11,899)
2.	Salaries and Wages - Officers (603)	
	Allow salary for President.	$4,142
	To reduce President's salary per ENG	(1,035)
	Total	$3,106
3.	Purchased Power (615)	
	To reflect actual test year expense.	($226)
	To remove amount associated with pump at unused wellsite.	(148)
	Total	($374)
4	Contractual Services - Professional (632)	
	To remove temporary office help.	($3,488)
	To remove amount for 2012 income tax preparation.	(985)
	To remove estimate for yearly annual report.	(2,100)
	To remove amount for non-recurring consulting expense.	(425)
	To reflect appropriate estimate amount for yearly annual report.	(330)
	To reflect five-year amortization of non-recurring expenses.	1,466
	To reflect meter replacement program.	5,760
	Total	($102)
5	Contractual Services - Testing (635)	
	To reflect addition of FDEP required tri-annual testing.	$885
	Reduce account for duplicate invoice.	(595)
	Total	$290
6.	Rent Expense (640)	
	Include allowance for annual Rent Expense.	$9,144
7.	Regulatory Commission Expense (665)	
	Allowance for rate case expense amortized over four years.	$341

	CEDAR ACRES, INC.	**SCHEDULE NO. 3-B**
	TEST YEAR ENDED 09/30/14	**DOCKET NO. 140217-WU**
	ADJUSTMENTS TO OPERATING INCOME	**PAGE 2 OF 2**
		WATER
8.	Miscellaneous Expense (675)	
	Remove unsupported error on deposit.	($18)
	Remove lawn maintenance for unused parcel of land & non-utility lot.	(1,050)
	To reflect amortization of plant repairs and maintenance.	875
	Allowance for computer.	83
	Allowance for printer.	25
	Allowance for operating software.	150
	Allowance for accounting software.	283
	Total	**$348**
	TOTAL OPERATION & MAINTENANCE ADJUSTMENTS	**$854**
	DEPRECIATION EXPENSE	
	To reflect appropriate depreciation expense.	($4,464)
	TAXES OTHER THAN INCOME	
1.	To adjust property tax for unused parcel of land.	($12)
2.	To adjust payroll tax for recommended salaries.	2,916
3.	To adjust for regulatory assessment fees on test year revenue.	307
	Total	$3,211

CEDAR ACRES, INC. **SCHEDULE NO. 3-C**
TEST YEAR ENDED 09/30/14 **DOCKET NO. 140217-WU**
ANALYSIS OF WATER O&M EXPENSES

	TOTAL PER UTILITY	STAFF PER ADJUST.		TOTAL PER PER STAFF
(601) SALARIES AND WAGES - EMPLOYEES	$50,837	($11,899)	[1]	$38,938
(603) SALARIES AND WAGES - OFFICERS	1,350	3,106	[2]	4,456
(604) EMPLOYEE PENSION & BENEFITS	0	0		0
(610) PURCHASED WATER	0	0		0
(615) PURCHASED POWER	3,449	(374)	[3]	3,075
(616) FUEL FOR POWER PRODUCTION	315	0		315
(618) CHEMICALS	1,477	0		1,477
(620) MATERIALS AND SUPPLIES	0	0		0
(630) CONTRACTUAL SERVICES - BILLING	12,062	0		12,062
(631) CONTRACTUAL SERVICES - PROFESSIONAL	15,967	(102)	[4]	15,865
(635) CONTRACTUAL SERVICES - TESTING	2,866	290	[5]	3,156
(636) CONTRACTUAL SERVICES - OTHER	0	0		0
(640) RENTS	0	9,144	[6]	9,144
(650) TRANSPORTATION EXPENSE	0	0		0
(655) INSURANCE EXPENSE	0	0		0
(665) REGULATORY COMMISSION EXPENSE	0	341	[7]	341
(670) BAD DEBT EXPENSE	0	0		0
(675) MISCELLANEOUS EXPENSES	5,021	348	[8]	5,369
TOTAL WATER O&M EXPENSES	$93,344	$854		$94,198

CEDAR ACRES, INC.
DOCKET NO. 140217-WU
STAFF'S RECOMMENDED AND ALTERNATIVE
WATER RATE STRUCTURES AND RATES

Test Year Rate Structure and Rates			Recommended Rate Structure and Rates	
Monthly BFC/Uniform Gallonage Charge Rate Structure			Monthly BFC/Uniform Gallonage Charge Rate Structure BFC = 40%	
BFC	$9.00		BFC	$11.92
Charge per kgals	$0.045		Charge per kgal	$4.36
Typical Monthly Bills			Typical Monthly Bills	
Consumption (kgals)			Consumption (kgals)	
0	$9.00		0	$11.92
4	$9.18		4	$29.36
6	$9.27		6	$38.08
10	$9.45		10	$55.52
Alternative 1 Rate Structure and Rates			Alternative 2 Rate Structure and Rates	
Monthly BFC/Uniform Gallonage Charge Rate Structure BFC = 35%			Monthly BFC/Uniform Gallonage Charge Rate Structure BFC =45%	
BFC	$10.45		BFC	$13.37
Charge per kgals	$4.38		Charge per kgal	$4.32
Typical Monthly Bills			Typical Monthly Bills	
Consumption (kgals)			Consumption (kgals)	
0	$10.45		0	$13.37
4	$27.97		4	$30.65
6	$36.73		6	$39.29
10	$54.25		10	$56.57

CEDAR ACRES, INC. **DOCKET NO. 140217-WU**
TEST YEAR ENDED SEPTEMBER 30, 2014 **SCHEDULE NO. 4-B**
MONTHLY WATER RATES

	UTILITY CURRENT RATES	STAFF RECOMMENDED RATES	4 YEAR RATE REDUCTION
Residential and General Service			
Base Facility Charge all Meter Sizes	$9.00	N/A	N/A
Base Facility Charge by Meter Size			
5/8"x3/4"	N/A	$11.92	$0.04
3/4"	N/A	$17.88	$0.06
1"	N/A	$29.80	$0.10
1-1/2"	N/A	$59.60	$0.20
2"	N/A	$95.36	$0.33
3"	N/A	$190.72	$0.66
4"	N/A	$298.00	$1.03
6"	N/A	$596.00	$2.05
Charge per 1,000 gallons	$0.045	$4.36	$0.02
Typical Residential 5/8" x 3/4" Meter Bill Comparison			
4,000 Gallons	$9.18	$29.36	
6,000 Gallons	$9.27	$38.08	
10,000 Gallons	$9.45	$55.52	

Cedar Acres, Inc.
Plant & Accumulated Depreciation Balances
Docket No. 140217-WU

Water
Test Year Ended 9/30/14

Account No.	Description	UPIS	Accumulated Depreciation
307	Wells and Springs	$32,158	$4,183
310	Power Generation Equipment	23,971	3,878
311	Pumping Equipment	890	144
		$57,019	$8,205

Item 5

FILED OCT 01, 2015
DOCUMENT NO. 06169-15
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
15 OCT -1 AM 8:48
COMMISSION CLERK

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Ollila) A.O. EJD
Office of the General Counsel (Mapp) KRM

RE: Docket No. 150172-GU – Petition for approval of amendments to special contract with Polk Power Partners, L.P., by Florida Division of Chesapeake Utilities Corporation.

AGENDA: 10/13/15 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Patronis

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On July 27, 2015, the Florida Division of Chesapeake Utilities Corporation (Chesapeake or Company) filed a petition for approval of amendments to its special contracts with Polk Power Partners, L.P. (Polk). The most recent amendments were approved in 2006 and expire at the end of 2015.[1] In this proceeding, Chesapeake seeks approval of amendments to the Delivery Point Lease, the Capacity Relinquishment Agreement, and the Gas Transportation Service Special Contract. Staff issued two data requests.

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[1] Order No. PSC-06-0143-PAA-GU, issued February 27, 2006, in Docket No. 050835-GU, *In re: Petition for approval of Amendment No. 2 to gas transportation agreement (special contract), master gas transportation service termination agreement, delivery point lease agreement and letter agreement: CFG Transportation Aggregation Service between Florida Division of Chesapeake Utilities Corporation and Polk Power Partners, L.P.*

Chesapeake has provided gas transportation service to Polk's 115 megawatt cogeneration facility for over 20 years.[2] In 1993, Polk established a direct connection with Florida Interstate Gas Transmission's (FGT) interstate pipeline and currently obtains the majority of the gas it needs to operate its cogeneration facility from FGT. According to Chesapeake, Polk is fully capable of entirely bypassing Chesapeake in favor of obtaining all of its gas requirements through its direct connect with FGT at a rate which would make bypass an attractive option to Polk.

Rule 25-9.034(1), Florida Administrative Code, requires that whenever a special contract is entered into by a utility for the sale of its product or services in a manner or subject to the provisions not specifically covered by its filed regulations and standard approved rate schedules, such contract must be approved by the Commission prior to its execution. The Commission has jurisdiction over this matter pursuant to Section 366.05, Florida Statutes.

[2] Order No. PSC-92-0201-FOF-GU, issued April 14, 1992, in Docket No. 920156-GU, *In re: Petition by the Florida Division of Chesapeake Utilities Corporation for approval of Large Volume Contract Transportation Service Rate Schedule and Gas Transportation Agreement with Mulberry Energy Company, Inc.*

Discussion of Issues

Issue 1: Should the Commission approve the amendments to the special contracts between Chesapeake and Polk?

Recommendation: Yes, the Commission should approve the amendments because they allow Chesapeake to continue its relationship with Polk through August 2024, prevent bypass, and establish a rate that covers the incremental cost of service, thereby benefiting Chesapeake's general body of ratepayers. (Ollila)

Staff Analysis: Chesapeake seeks approval of amendments to the Delivery Point Lease, the Capacity Relinquishment Agreement, and the Gas Transportation Service Special Contract. The three contracts are discussed below.

Contracts

Delivery Point Lease

This contract designates Chesapeake as Polk's delivery point operator at the point where Polk's gas lines connect to FGT. As the delivery point operator, Chesapeake is permitted to combine the volumes delivered to Polk in order to manage gas deliveries. By combining the deliveries, gas over burns and under burns can be offset, which could serve to reduce or eliminate potential penalties imposed by pipelines. The proposed amendment extends the contract term from December 2015 to August 2024.

Capacity Relinquishment Agreement

This contract describes the terms under which Chesapeake agrees to relinquish to Polk certain firm capacity rights pursuant to Chesapeake's agreement with FGT. The proposed amendment has two changes: it extends the contract term from December 2015 to August 2024; and it changes the capacity release commitment from a specific amount to a range, modifying the language to be more consistent with Federal Energy Regulatory Commission requirements for noticing capacity releases.

Gas Transportation Service Special Contract

The proposed amendment has two changes: it extends the contract term from December 2015 to August 2024; and it revises the proposed negotiated (confidential) rate, which covers the incremental cost of service.

Chesapeake explains that because of Polk's direct connection with FGT, Polk has been able to meet a majority of its need for gas directly from FGT, thus gradually reducing the amount it has obtained from Chesapeake. This results in a reduction of the capacity requirement on Chesapeake's system. According to Chesapeake, the amendment reflects the new and reduced level of capacity that Polk needs from Chesapeake. The proposed rate reflects a small reduction, which Chesapeake states recognizes the value of Polk as a customer as well as the risk of harm to Chesapeake and its ratepayers if Polk were to bypass Chesapeake. Chesapeake provides a benefit to Polk by serving as a second source of gas.

The incremental cost of service study results in an annual cost of $176,110. This amount includes operations and maintenance expense, depreciation, taxes, and return on investment.

Chesapeake asserts that the proposed rate allows Chesapeake to appropriately recover its ongoing costs to serve Polk.

Conclusion

In its petition, Chesapeake states that the Commission has recognized:

> Having industrial customers on the system greatly benefits all users, particularly the residential customers. Customers benefit because large load users are able to absorb a greater portion of the fixed cost necessary to provide the service; as a result, rates are lower, especially for small load users. Conversely, losing industrial customers who have alternative fuel sources or viable bypass options would pose a greater burden on all ratepayers, and could result in higher rates.[3]

Staff recommends that the Commission approve the amendments because they allow Chesapeake to continue its relationship with Polk through August 2024, prevent bypass, and establish a rate that covers the incremental cost of service, thereby benefiting Chesapeake's general body of ratepayers.

[3] Order No. PSC-10-0029-PAA-GU, issued January 14, 2010, in Docket No. 090125-GU, *In re: Petition for increase in rates by Florida Division of Chesapeake Utilities Corporation.*

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Mapp)

Staff Analysis: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

Item 6

FILED OCT 01, 2015
DOCUMENT NO. 06168-15
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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RECEIVED-FPSC
15 OCT -1 AM 8:48
COMMISSION CLERK

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Ollila) A.O. PD EM CS
Office of the General Counsel (Villafrate) JSC

RE: Docket No. 150175-GU – Petition for approval of amendment to special contract with Orange Cogeneration Limited Partnership, by Florida Division of Chesapeake Utilities.

AGENDA: 10/13/15 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On July 31, 2015, the Florida Division of Chesapeake Utilities Corporation (Chesapeake or Company) filed a petition for approval of an amendment to its Gas Transportation Service Special Contract (contract) with Orange Cogeneration Limited Partnership (Orange). Chesapeake and Orange entered into the original contract in July 1994 and it expires at the end of 2015.[1] Chesapeake has served Orange's Polk County 104 megawatt facility for over twenty years. According to Chesapeake, Orange could bypass Chesapeake entirely in favor of a direct connect with the Florida Gas Transmission (FGT) interstate pipeline.

[1] Order No. PSC-94-1169-FOF-GU, issued September 26, 1994, in Docket No. 940830-GU, *In re: Petition for approval of a gas transportation agreement with Orange Cogeneration Limited Partnership by Florida Division of Chesapeake Utilities Corporation.*

Staff issued two data requests. In its response to Staff's First Data Request, Chesapeake included a correction to its operations and maintenance expense.

Rule 25-9.034(1), Florida Administrative Code, requires that whenever a special contract is entered into by a utility for the sale of its product or services in a manner or subject to the provisions not specifically covered by its filed regulations and standard approved rate schedules, such contract must be approved by the Commission prior to its execution. The Commission has jurisdiction over this matter pursuant to Section 366.05, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the amendment to the contract between Chesapeake and Orange?

Recommendation: Yes, the Commission should approve the amendment because it allows Chesapeake to continue its relationship with Orange through December 2025, prevent bypass, and establish a rate that covers the incremental cost of service, thereby benefiting Chesapeake's general body of ratepayers. (Ollila)

Staff Analysis: Chesapeake seeks approval of an amendment to its contract with Orange. The proposed amendment extends the contract term to December 2025 and provides for what Chesapeake describes as a modest reduction in the negotiated transportation rate.

Chesapeake explains that the Orange facility is within 1,000 feet of FGT, and that Orange could construct an extension to interconnect with FGT for approximately $450,000, recoverable in three years. Chesapeake avers that although Chesapeake and Orange have had a lengthy business relationship, the economic incentive for Orange to remain with Chesapeake is marginal. In recent years Orange's usage has decreased, resulting in a reduced incentive to remain on Chesapeake's system; at the same time the initial installation costs associated with the facilities that Chesapeake installed to serve Orange have largely been recovered.

The proposed negotiated (confidential) rate is subject to a three percent annual increase over the term of the contract and fully covers the incremental cost of service after the second year of the proposed 10-year extension to the contract. The incremental cost of service study includes operations and maintenance expense, depreciation, taxes, and return on investment, resulting in an annual cost of $120,873, which is estimated to decrease after the first year of the contract. According to Chesapeake, the proposed rate properly recognizes the value of Orange as a Chesapeake customer, as well as the risk of harm to Chesapeake and its ratepayers if Orange were to bypass Chesapeake.

Conclusion

In its petition, Chesapeake states that the Commission has recognized:

> Having industrial customers on the system greatly benefits all users, particularly the residential customers. Customers benefit because large load users are able to absorb a greater portion of the fixed cost necessary to provide the service; as a result, rates are lower, especially for small load users. Conversely, losing industrial customers who have alternative fuel sources or viable bypass options would pose a greater burden on all ratepayers, and could result in higher rates.[2]

Staff recommends that the Commission approve the amendment because it allows Chesapeake to continue its relationship with Orange through December 2025, prevent bypass, and establish a

[2] Order No. PSC-10-0029-PAA-GU, issued January 14, 2010, in Docket No. 090125-GU, *In re: Petition for increase in rates by Florida Division of Chesapeake Utilities Corporation.*

rate that covers the incremental cost of service, thereby benefiting Chesapeake's general body of ratepayers.

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Villafrate)

Staff Analysis: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

Item 7

FILED OCT 01, 2015
DOCUMENT NO. 06172-15
FPSC - COMMISSION CLERK

State of Florida

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RECEIVED-FPSC
15 OCT -1 AM 9:30
COMMISSION CLERK

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Thompson) SH PD GB
Office of the General Counsel (Janjic) DJ JSC

RE: Docket No. 150092-WS – Request for approval of amendment to tariff for miscellaneous service charges by Marion Utilities, Inc.

AGENDA: 10/13/15 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 11/13/15 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

Case Background

Marion Utilities, Inc. (Marion or utility) is a Class A utility, which provides service in Marion County to approximately 6,158 water and 136 wastewater customers. The utility's 2014 annual report shows a combined water and wastewater annual operating revenue of $1,496,745, and a total utility operating income of $68,048. On March 23, 2015, the utility filed an application to increase miscellaneous service charges and initial customer deposits and add meter tampering, convenience, and non-sufficient funds charges. The tariffs were suspended pending further investigation.[1] This recommendation addresses the utility's request to amend its tariff sheets. The Commission has jurisdiction pursuant to Section 367.091(6), Florida Statutes (F.S.).

[1]Order No. PSC-15-0209-PCO-WS, issued May 27, 2015, in Docket No. 150092-WS, *In re: Request for approval of amendment to tariff for miscellaneous service charges by Marion Utilities, Inc.*

Discussion of Issues

Issue 1: Should Marion's request to amend its miscellaneous service charges be approved?

Recommendation: Yes. Marion's request to amend its miscellaneous service charges should be approved. Marion should be required to file a proposed customer notice to reflect the Commission-approved charges. The approved charges should be effective for services rendered on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), Florida Administrative Code (F.A.C.). In addition, the approved charges should not be implemented until staff has approved the proposed customer notice. The utility should provide proof of the date notice was given no less than 10 days after the date of the notice. (Thompson)

Staff Analysis: Section 367.091, F.S., authorizes the Commission to establish, increase, or change a rate or charge other than monthly rates or service availability charges. Rule 25-30.460, F.A.C., defines miscellaneous service charges as initial connection, normal reconnection, violation reconnection, and premises visit charges. The utility is requesting an amendment to its existing miscellaneous service charges as reflected below.

Table 1-1
Miscellaneous Service Charges

Charge	Current		Proposed	
	Normal Hours	After Hours	Normal Hours	After Hours
Initial Connection	$20	$40	$35	$44
Normal Connection	$20	$40	$35	$44
Violation Connection	$20	$40	$46	$55
Premises Visit	$20	$40	$22	$26

Source: Utility Tariff and Utility Correspondence

The utility's request was accompanied by its reason for requesting the amendment, as well as the cost justification required by Section 367.091, F.S. as reflected in Tables 1-2 through 1-4 below.

Table 1-2
Initial Connection and Normal Reconnection Cost Justification

Activity	Normal Hours Cost		Activity	After Hours Cost
Labor ($25.10/hr x .75hr)	$18.83		Labor ($37.65/hr x .75hr)	$28.24
Transportation ($.575/mile x 28 miles)	$16.10		Transportation ($.575/mile x 28 miles)	$16.10
Total	$34.93		Total	$44.34

Source: Utility Correspondence

Table 1-3
Violation Reconnection Cost Justification

Activity	Normal Hours Cost		Activity	After Hours Cost
Labor ($25.10/hr x .75hr)	$18.83		Labor ($37.65/hr x .75hr)	$28.24
Transportation ($.575/mile x 28 miles)	$16.10		Transportation ($.575/mile x 28 miles)	$16.10
Additional Administrative Time ($25.77/hr x .41 hr)	$10.57		Additional Administrative Time ($25.77/hr x .41 hr)	$10.57
Total	$45.50		Total	$54.91

Source: Utility Correspondence

Table 1-4
Premises Visit Cost Justification

Activity	Normal Hours Cost		Activity	After Hours Cost
Labor ($25.10/hr x .25hr)	$6.28		Labor ($37.65/hr x .25hr)	$9.41
Transportation ($.575/mile x 28 miles)	$16.10		Transportation ($.575/mile x 28 miles)	$16.10
Total	$22.38		Total	$25.51

Source: Utility Correspondence

The utility's proposed charges are reasonable and similar to or lower than charges previously approved by the Commission for similar utilities.[2] Additionally, Commission practice has been to place the burden of such charges on the cost causer rather than the general body of ratepayers. This is consistent with one of the fundamental principles of rate making—ensuring that the cost of providing service is recovered from the cost causer.[3]

Based on the above, Marion's request to amend its miscellaneous service charges should be approved. Marion should be required to file a proposed customer notice to reflect the Commission-approved charges. The approved charges should be effective for services rendered on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charges should not be implemented until staff has approved the proposed

[2]Order No. PSC-11-0199-PAA-WU, issued April 22, 2011, in Docket No. 100149-WU, *In re: Application for increase in water rates in Lee County by Ni Florida, LLC*; and Order No. PSC-08-0827-PAA-WS, issued December 22, 2008, in Docket No. 070694-WS, *In re: Application for increase in water and wastewater rates in Orange County by Wedgefield Utilities, Inc.*

[3]Order No. PSC-03-1119-PAA-SU, issued October 7, 2003, in Docket No. 030106-SU, *In re: Application for staff-assisted rate case in Lee County by Environmental Protection Systems of Pine Island, Inc.*; and Order No. PSC-96-1409-FOF-WU, issued November 20, 1996, in Docket No. 960716-WU, *In re: Application for transfer of Certificate No. 123-W in Lake County from Theodore S. Jansen d/b/a Ravenswood Water System to Crystal River Utilities, Inc.*

customer notice. The utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

Issue 2: What are the appropriate initial customer deposits for Marion Utilities, Inc.?

Recommendation: The appropriate initial customer deposits for water and wastewater should be $55 for the residential 5/8" x 3/4" meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The utility should file revised tariff sheets consistent with the Commission's vote. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding. (Thompson)

Staff Analysis: Rule 25-30.311, F.A.C., contains criteria for collecting, administering, and refunding customer deposits. Rule 25-30.311(1), F.A.C., requires that each company's tariff shall contain their specific criteria for determining the amount of initial deposits. Marion's current tariff authorizes the utility to collect initial customer deposits of $35.00 for residential water 5/8" x 3/4" meter size and $35.00 for residential and general service wastewater 5/8" x 3/4" meter size. Marion has requested an initial customer deposit of $55 for the residential and general service 5/8" x 3/4" meter size for both water and wastewater. Customer deposits are designed to minimize the exposure of bad debt expense for the utility and, ultimately, the general body of rate payers. In addition, collection of customer deposits is consistent with one of the fundamental principles of rate making—ensuring that the cost of providing service is recovered from the cost causer.

Rule 25-30.311(7), F.A.C., authorizes utilities to collect new or additional deposits from existing customers not to exceed an amount equal to the average actual charge for water and/or wastewater service for two billing periods for the 12-month period immediately prior to the date of notice. The two billing periods reflect the lag time between the customer's usage and the utility's collection of the revenues associated with that usage. Commission practice has been to set initial customer deposits equal to two months bills based on the average consumption for a 12-month period for each class of customers. Staff reviewed the customer usage data and determined that the utility's proposed initial customer deposits are consistent with staff's methodology for initial customer deposits.

Staff recommends that the appropriate initial customer deposits should be $55 for the residential and general service 5/8" x 3/4" meter size for water and wastewater. The initial customer deposit for all other residential and general service meter sizes should be two times the average estimated bill. The utility should file revised tariff sheets consistent with the Commission's vote. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding.

Issue 3: Should the utility's requested meter tampering charge be approved?

Recommendation: Yes. Marion's request to implement a $50 meter tampering charge should be approved. The charge should be effective for services rendered on or after the stamped approval date on the tariff, pursuant to Rule 25-30.475, F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days of the date of the notice. (Thompson)

Staff Analysis: Rule 25-30.320(2)(i), F.A.C., provides that a customer's service may be discontinued without notice in the event of tampering with the meter or other facilities furnished or owned by the utility. In addition, Rule 25-30.320(2)(j), F.A.C., provides that a customer's service may be discontinued in the event of an unauthorized or fraudulent use of service. The rule allows the utility to require the customer to reimburse the utility for all changes in piping or equipment necessary to eliminate the illegal use and to pay an amount reasonably estimated as the deficiency in revenue resulting from the customer's fraudulent use before restoring service.

Pursuant to Rule 25-30.345, F.A.C., a utility may charge a reasonable fee to defray the cost of restoring service that was discontinued for proper cause as specified in Rule 25-30.320, F.A.C. Consistent with a recent Commission decision, a meter tampering charge based on the typical costs to be incurred in investigating and resolving situations of meter tampering should be approved.[4] The utility's request to implement a meter tampering charge of $50 is reasonable and consistent with prior Commission decisions and should be approved. However, the charge is appropriate only where an investigation reveals evidence of meter tampering. As required by Section 367.091, F.S., the utility's cost analysis breakdown for its requested charge is shown below.

Table 3-1
Meter Tampering Charge Cost Justification

Activity	Charge
Master Locks	$23.98
Labor	$25.00
Total	$48.98

Source: Utility Correspondence

Therefore, staff recommends that Marion's request to implement a $50 meter tampering charge should be approved. The charge should be effective for services rendered on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days of the date of the notice.

[4]Order No. PSC-12-0357-PAA-WU, issued July 10, 2012, in Docket No. 100048-WU, *In re: Application for increase in water rates in Marion County by Sunshine Utilities of Central Florida, Inc.*

Issue 4: Should the Commission approve Marion's request to implement a convenience charge for customers who opt to pay their water or wastewater bill by debit or credit card?

Recommendation: Yes. Marion's request to implement a convenience charge of $2.50 for customers who opt to pay their water or wastewater bill by debit or credit card should be approved. The charge should be effective for services rendered on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days of the date of the notice. (Thompson)

Staff Analysis: Section 367.091, F.S., authorizes the Commission to establish, increase, or change a rate or charge other than monthly rates or service availability charges. The utility is requesting a $2.50 convenience fee to recover the cost of supplies, administrative labor, and equipment. As required by Section 367.091, F.S., the utility's cost analysis breakdown for its requested charge is shown below.

Table 4-1
Convenience Charge Cost Justification

Activity	Cost
Clerical	$1.27
Cost of Paper	$.35
Credit Card Machine	$.88
Total	$2.50

Source: Response to Staff's First Data Request

The Commission recently approved a charge of $2.60 for customers who opt to pay their bill with debit or credit cards for Brevard Waterworks, Inc., LP Waterworks, Inc., and Lakeside Waterworks, Inc., among others.[5] In those cases, the charges were designed to recover the cost of supplies, administrative labor, and equipment. The Commission has also approved charges in other industries for customers who opt to pay their bill by debit or credit card. An electronic bill payment fee of $3.50 was approved for Florida Public Utilities Company's (FPUC) gas customers in 2004.[6] In that case, the Commission found the charge was necessary to recover the additional costs incurred by FPUC from customers who opt to pay by credit card, debit card, or electronic check. The Commission also approved a charge of $3.50 for residential customers and 3.5 percent of the total bill amount for all other FPUC electric customers in 2005.[7] The charge

[5]Order Nos. PSC-15-0188-TRF-WU, issued May 6, 2015, in Docket No. 150065-WU, *In re: Application for approval of miscellaneous service charges in Brevard County, by Brevard Waterworks, Inc.*; PSC-15-0180-TRF-WS, issued May 6, 2015, in Docket No. 150063-WS, *In re: Request for approval of amendment to tariff sheets for miscellaneous service charges in Highlands County by LP Waterworks, Inc.*; PSC-15-0184-TRF-WS, issued May 6, 2015, in Docket No. 150061-WS, *In re: Request for approval of amendment to tariff sheets for miscellaneous service charges in Lake County by Lakeside Waterworks, Inc.*
[6]Order No. PSC-04-1110-PAA-GU, issued November 8, 2004, in Docket No. 040216-GU, *In re: Application for rate increase by Florida Public Utilities Company.*
[7]Order No. PSC-05-0676-TRF-EI, issued June 20, 2005, in Docket No. 050244-EI, *In re: Request to establish charge for customers paying by credit card, debit card or electronic check, by the Florida Public Utilities Company.*

was designed to recover the costs incurred for customer contact, supervision, and bank and credit card processing.

Staff believes that the utility's requested charge of a $2.50 convenience charge is reasonable for customers who opt to pay their water bill by debit or credit card. The utility's requested charge benefits the customers by allowing them to expand their payment options. Furthermore, this fee will insure the utility's remaining customers do not subsidize those customers who choose to pay using this option.

Based on the above, staff recommends that Marion's request to implement a convenience charge of $2.50 for customers who opt to pay their water or wastewater bill by debit or credit card should be approved. The charge should be effective for services rendered on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The utility should provide proof of the date notice was given within 10 days of the date of the notice.

Issue 5: Should Marion be authorized to collect Non-Sufficient Funds (NSF) charges?

Recommendation: Yes. Marion should be authorized to collect NSF charges. Staff recommends that Marion revise its tariffs to reflect the NSF charges currently set forth in Sections 68.065 and 832.08(5), F.S. The NSF charges should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. Furthermore, the charges should not be implemented until staff has approved the proposed customer notice. The utility should provide proof of the date the notice was given within 10 days of the date of the notice. (Thompson)

Staff Analysis: Section 367.091, F.S., requires rates, charges, and customer service policies to be approved by the Commission. The Commission has authority to establish, increase, or change a rate or charge. Staff believes that Marion should be authorized to collect NSF charges consistent with Section 68.065, F.S., which allows for the assessment of charges for the collection of worthless checks, drafts, or orders of payment. As currently set forth in Sections 832.08(5) and 68.065(2), F.S., the following NSF charges may be assessed:

1. $25, if the face value does not exceed $50,
2. $30, if the face value exceeds $50 but does not exceed $300,
3. $40, if the face value exceeds $300,
4. or five percent of the face amount of the check, whichever is greater.

Approval of NSF charges is consistent with prior Commission decisions.[8] Furthermore, NSF charges place the cost on the cost-causer, rather than requiring that the costs associated with the return of the NSF checks be spread across the general body of ratepayers. As such, staff recommends that Marion revise its tariffs to reflect the NSF charges currently set forth in Sections 68.065 and 832.08(5) F.S. The NSF charges should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. Furthermore, the NSF charges should not be implemented until staff has approved the proposed customer notice. The utility should provide proof of the date the notice was given within 10 days of the date of the notice.

[8]Order Nos. PSC-14-0198-TRF-SU, issued May 2, 2014, in Docket No. 140030-SU, *In re: Request for approval to amend Miscellaneous Service charges to include all NSF charges by Environmental Protection Systems of Pine Island, Inc.*, and PSC-13-0646-PAA-WU, issued December 5, 2013, in Docket No. 130025-WU, *In re: Application for increase in water rates in Highlands County by Placid Lakes Utilities, Inc.*

Issue 6: Should this docket be closed?

Recommendation: No. The docket should remain open pending staff's verification that the revised tariff sheets and customer notice have been filed by the utility and approved by staff. If a protest is filed within 21 days of the issuance date of the Order, the tariff should remain in effect with the charge held subject to refund pending resolution of the protest. If no timely protest is filed, a consummating order should be issued and, once staff verifies that the notice of the charge has been given to customers, the docket should be administratively closed. (Janjic)

Staff Analysis: The docket should remain open pending staff's verification that the revised tariff sheet and customer notice have been filed by the utility and approved by staff. If a protest is filed within 21 days of the issuance date of the Order, the tariff should remain in effect with the charge held subject to refund pending resolution of the protest. If no timely protest is filed, a consummating order should be issued and, once staff verifies that the notice of the charge has been given to customers, the docket should be administratively closed.

Item 8

FILED OCT 01, 2015
DOCUMENT NO. 06217-15
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 1, 2015

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Telecommunications (Curry, Bates, Beard, Casey, Deas, Flores, Fogleman, Hawkins, Long, Salak, Williams)
Office of the General Counsel (Tan, Ames)

RE: 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.

AGENDA: 10/13/15–Regular Agenda–Post-Hearing Decision–Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: Brisé, Brown, Patronis

PREHEARING OFFICER: Brisé

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Table of Contents

Issue	Description	Page
	Abbreviations and Acronyms	- 5 -
	Case Background	7
1	Is AT&T Florida obligated to provide UNEs for the provision of Information Services?	10
2	Is CA entitled to become a Tier 1 Authorized Installation Supplier (AIS) to perform work outside its collocation space?	14
3	When CA supplies a written list for subsequent placement of equipment, should an application fee be assessed?	18
4A	If CA is in default, should AT&T Florida be allowed to reclaim collocation space prior to conclusion of a dispute regarding the default?	21
4B	Should AT&T Florida be allowed to refuse CA's applications for additional collocation space or service or to complete pending orders after AT&T Florida has notified CA it is in default of its obligations as Collocator but prior to conclusion of a dispute regarding the default?	25
5	Should CA be required to provide AT&T Florida with a certificate of insurance prior to starting work in CA's collocation space on AT&T Florida's premises?	27
6	Should AT&T Florida be allowed to recover its costs when it erects an internal security partition to protect its equipment and ensure network reliability and such partition is the least costly reasonable security measure?	30
7A	Under what circumstances may AT&T Florida charge CA when CA submits a modification to an application for collocation, and what charges should apply?	32
7B	When CA wishes to add or to modify its collocation space or the equipment in that space, or to cable to that space, should CA be required to submit an application and to pay the associated application fee?	34
8	Is 120 calendar days from the date of a request for an entrance facility, plus the ability to extend that time by an additional 30 days, adequate time for CA to place a cable in a manhole?	36
9A	Should the ICA require CA to utilize an AT&T Florida AIS Tier 1 for CLEC-to-CLEC connection within a CO?	38
9B	Should CLEC-to-CLEC connection within a CO be required to utilize AT&T Florida common cable support structure?	40
10	If equipment is improperly collocated (e.g., not previously identified on an approved application for collocation or not on authorized equipment list), or is a safety hazard, should CA be able to delay removal until the dispute is resolved?	42
11	Should the period of time in which the Billed Party must remit payment be thirty (30) days from the bill date or twenty (20) days from receipt of the bill?	46
13Ai	Should the definition of Late Payment Charge limit the applicability of such charges to undisputed charges not paid on time?	50
13Aii	Should Late Payment Charges apply if CA does not provide the necessary remittance information?	52

13B	Should the definition of Past Due be limited to undisputed charges that are not paid on time?	54
13C	Should the definition of Unpaid Charges be limited to undisputed charges that are not paid on time?	56
13D	Should Late Payment Charges apply only to undisputed charges?	58
14A	Should the GT&Cs state that the parties shall provide each other local interconnection services or components at no charge?	60
14Bi	Should an ASR supplement be required to extend the due date when the review and discussion of a trunk servicing order extends beyond 2 business days?	63
14Bii	Should AT&T Florida be obligated to process CA's ASRs at no charge?	67
15ii	May CA exclude explosion, collapse and underground damage coverage from its Commercial General Liability policy if it will not engage in such work?	70
16	Which party's insurance requirements are appropriate for the ICA when CA is collocating?	72
17ii	Should AT&T Florida be obligated to recognize an assignment or transfer of the ICA that the ICA does not permit?	76
17iii	Should the ICA disallow assignment or transfer of the ICA to an Affiliate that has its own ICA in Florida?	79
18	Should the ICA expire on a date certain that is two years plus 90 days from the date the ICA is sent to CA for execution, or should the term of the ICA be five years from the effective date?	82
19	Should termination due to failure to correct a material breach be prohibited if the Dispute Resolution process has been invoked but not concluded?	86
20	Should AT&T Florida be permitted to reject CA's request to negotiate a new ICA when CA has a disputed outstanding balance under this ICA?	89
22A	Should the disputing party be required to use the billing party's preferred form or method to communicate billing disputes?	92
22B	Should CA use AT&T Florida's form to notify AT&T Florida that it is disputing a bill?	94
23A-C	Should a party that disputes a bill be required to pay the disputed amount into an interest-bearing escrow account pending resolution of the dispute?	96
24i	Should the ICA provide that the billing party may only send a discontinuance notice for unpaid undisputed charges?	99
24ii	Should the non-paying party have 15 or 30 calendar days from the date of a discontinuance notice to remit payment?	101
25	Should the ICA obligate the billing party to provide itemized detail of each adjustment when crediting the billed party when a dispute is resolved in the billed party's favor?	103
27	Should the ICA permit CA to dispute a class of related charges on a single dispute notice?	106
29i	Should the ICA permit a party to bring a complaint directly to the Commission, bypassing the dispute resolution provisions of the ICA?	108
29ii	Should the ICA permit a party to seek relief from the Commission for an alleged violation of law or regulation governing a subject that is covered by the ICA?	112
30i	Should the joint and several liability terms be reciprocal?	115

30ii Can a third-party that places an order under this ICA using CA's company code or identifier be jointly and severally liable under the ICA? 118
32 Shall the purchasing party be permitted to not pay taxes because of a failure by the providing party to include taxes on an invoice or to state a tax separately on such invoice?....................120
33A Should the purchasing party be excused from paying a Tax to the providing party that the purchasing party would otherwise be obligated to pay if the purchasing party pays the Tax directly to the Governmental Authority? 122
33B If CA has both resale customers and facilities-based customers, should CA be required to use AT&T Florida as a clearinghouse for 911 surcharges with respect to resale lines? 126
34 Should CA be required to interconnect with AT&T Florida's E911 Selective Router?128
35 Should the definition of Entrance Facilities exclude interconnection arrangements where the POI is within an AT&T Florida serving wire center and CA provides its own transport on its side of that POI? 131
36 Should the network interconnection architecture plan section of the ICA provide that CA may lease TELRIC-priced facilities to link one POI to another? 136
37 Should CA be solely responsible for the facilities that carry CA's OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups? 140
38 May CA designate its collocation as the POI? 145
40 Should the ICA obligate CA to establish a dedicated trunk group to carry mass calling traffic?....................152
41 Should the ICA include CA's language providing for SIP Voice-over-IP trunk groups? 161
43i Is the billing party entitled to accrue late payment charges and interest on unpaid intercarrier compensation charges? 169
43ii When a billing dispute is resolved in favor of the billing party, should the billed party be obligated to make payment within 10 business days or 30 business days?.....172
44 Should the ICA contain a definition for HDSL-capable loops?....................174
45 How should the ICA describe what is meant by a vacant ported number? 180
46i Should the ICA include limitations on the geographic portability of telephone numbers?....................183
48A Should the provisioning dispatch terms and related charges in the OSS Attachment apply equally to both parties?....................185
48B Should the repair terms and related charges in the OSS Attachment apply equally to both parties?....................185
50 In order for CA to obtain from AT&T Florida an unbundled network element (UNE) or a combination of UNEs for which there is no price in the ICA, must CA first negotiate an amendment to the ICA to provide a price for that UNE or UNE combination? 191
51 Should AT&T Florida be required to prove to CA’s satisfaction and without charge that a requested UNE is not available?....................194
53 Should CA be allowed to comingle any UNE element with any non-UNE element it chooses?....................197
54A Is thirty (30) days written notice sufficient notice prior to converting a UNE to the equivalent wholesale service when such conversion is appropriate? 199

54B	Is thirty (30) calendar days subsequent to wire center Notice of Non-impairment sufficient notice prior to billing the provisioned element at the equivalent special access rate/Transitional Rate?	201
55	To designate a wire center as unimpaired, should AT&T Florida be required to provide written notice to CA?	204
56	Should the ICA include CA's proposed language broadly prohibiting AT&T Florida from taking certain measures with respect to elements of AT&T Florida's network?	207
57	May CA use a UNE to provide service to itself or for other administrative purposes?	210
58	Is multiplexing available as a stand-alone UNE independent of loops and transport?	213
59A	If AT&T Florida accepts and installs an order for a DS1 after CA has already obtained ten DS1s in the same building, must AT&T Florida provide written notice and allow 30 days before converting to and charging for Special Access Service?	219
59B	Must AT&T Florida provide notice to CA before converting DS3 Digital UNE loops to special access for DS3 Digital UNE loops that exceed the limit of one unbundled DS3 loop to any single building?	223
59C	For unbundled DS1 or DS3 dedicated transport circuits that AT&T Florida installs that exceed the applicable cap on a specific route, must AT&T Florida provide written notice and allow 30 days prior to conversion to Special Access?	225
60	Should CA be prohibited from obtaining resale services for its own use or selling them to affiliates?	227
61	Which party's language regarding detailed billing should be included in the ICA?	232
62A	Should the ICA state that OS/DA services are included with resale services?	235
62B	Does CA have the option of not ordering OS/DA service for its resale end users?	237
64	What time interval should be required for submission of directory listing information for installation, disconnection, or change in service?	239
65	Should the ICA include CA's proposed language identifying specific circumstances under which AT&T Florida or its affiliates may or may not use CA's subscriber information for marketing or winback efforts?	242
66	For each rate that CA has asked the Commission to arbitrate, what rate should be included in the ICA?	245
67	Should this docket be closed?	249
	Attachment A: Proposed Parties’ Language Related to Issues	250

Abbreviations and Acronyms

Act	Telecommunications Act of 1996
ACNA	Access Customer Name Abbreviation
AEL	All Equipment List
AIS	Approved Installation Supplier
ASR	Access Service Request
AT&T Florida	BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast
BFFO	Bona Fide Firm Order
CA	Communications Authority, Inc.
C.F.R.	Code of Federal Regulations
CIC	Carrier Information Code
CLEC	Competitive Local Exchange Carrier
CO	Central Office
CPNI	Customer Proprietary Network Information
DA	Directory Assistance
DS0	Digital Signal, level Zero. DS0 is 64,000 bits per second.
DS1	Digital Signal, level One. A 1.544 million bits per second digital signal carried on a T-1 transmission facility.
DS3	Digital Signal, level Three. The data rate for this type of signal is 44.736 million bits per second.
E911	Enhanced 911
EEL	Enhanced Extended Link
FCC	Federal Communications Commission
GT&C	General Terms and Conditions
HDSL	High Bit Rate Digital Subscriber Line
HVCI	High Volume Call-In
ICA	Interconnection Agreement
ILEC	Incumbent Local Exchange Carrier
IP	Internet Protocol
ISP	Internet Service Provider
IXC	Interexchange Carrier
LATA	Local Access Transport Area
LEC	Local Exchange Carrier
LERG	Local Exchange Routing Guide
LMU	Loop Makeup
LNP	Local Number Portability

Mux	Multiplexing
NEBS	Network Equipment Building Systems
NXX	Central Office Code/Prefix
OCN	Operating Company Number
OS	Operator Services
OSS	Operational Support Systems
POI	Point of Interconnection
PSAP	Public Safety Answering Position a/k/a Public Safety Answer Point
PSTN	Public Switched Telephone Network
SQM	Service Quality Measurement Plan
SR	Selective Router
SS7	Signaling System 7
TDM	Time Division Multiplexing
TELRIC	Total Element Long-Run Incremental Cost
TP	Technical Publication
TRO	Triennial Review Order, FCC 03-36
TRRO	Triennial Review Remand Order, FCC 04-290
UCL	Unbundled Copper Loop
UDT	Unbundled Dedicated Transport
UNE	Unbundled Network Element
USOC	Universal Service Order Code
VoIP	Voice over Internet Protocol

Case Background

On August 20, 2014, Communications Authority (CA) filed a petition to arbitrate a new interconnection agreement (ICA) with BellSouth Telecommunications, LLC d/b/a/AT&T Florida (AT&T Florida), pursuant to Section 251 and 252(b) of the Communications Act of 1934 ("the Act"), as amended.[1] In its petition, CA requested the Florida Public Service Commission (Commission) arbitrate 91 unresolved language issues, 217 rate issues, and establish terms and conditions for an interconnection agreement between CA and AT&T Florida.

AT&T Florida filed its response to CA's petition on September 15, 2014. The parties resolved some issues, consolidated others, and presented 66 issues (excluding subparts) for arbitration encompassing a broad range of interests at an issue identification meeting November 5, 2014. On January 29, 2015, AT&T Florida filed a letter waiving the nine month limit to reach a decision in order to accommodate the Commission's schedule for addressing this proceeding. An evidentiary hearing was held May 6-7, 2015.

The Commission has jurisdiction over the subject matter according to the provisions of Chapters 364 and 120, Florida Statutes.

NOTE: Each party's proposed ICA language, along with staff's recommended language, is listed in Attachment A.

Interconnection and Arbitration Process

Interconnection agreements between Competitive Local Exchange Carriers (CLECs), such as CA, and Incumbent Local Exchange Carriers (ILECs), such as AT&T Florida, are governed under 47 U.S.C. § 251 and 47 U.S.C. § 252. These sections were created with the Act, and provide the core components of competitive telecommunications regulation.

Section 251 establishes the general duties of CLECs and ILECs. All carriers have the duty to interconnect directly or indirectly with the facilities and equipment of other carriers, and to install network features, functions, and capabilities that comply with the guidelines and standards to promote nondiscriminatory access, particularly access for persons with disabilities. All local exchange carriers are obligated to not interfere with the resale of their telecommunications services, provide number portability, provide dialing parity, provide access to rights-of-way, and establish reciprocal compensation mechanisms with other carriers.

ILECs have additional obligations, including:

1. The duty to negotiate with competitive carriers in good faith the terms and conditions of agreements to interconnect as described in (b).
2. Physical interconnection arrangements should be made with any requesting carrier for exchange access and the transmission and routing of telephone service that is equal in

[1] Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151, et seq. (1996)).

quality to that provided to itself, on rates and terms that are just, reasonable and nondiscriminatory.

3. Unbundled Access to all local exchange carrier network elements should be made available to any requesting carrier on a nondiscriminatory basis and at rates, terms, and conditions that are just and reasonable.
4. Requiring the resale at wholesale rates of any service that the carrier provides at retail to subscribers who are not carriers.
5. Public notice of changes should be made to provide the information necessary for the continued provision of transmission and routing of services using that carrier's network.
6. Physical or virtual collocation must be provided to requesting carriers for interconnection or access to unbundled network elements at the premises of the local exchange carrier at rates, terms and conditions that are just, reasonable and nondiscriminatory.

Section 252 of the Act establishes procedures for negotiation, arbitration, and approval of interconnection agreements. First, an ILEC may enter into a negotiated agreement with a requesting carrier. The agreement should include a detailed schedule of itemized charges for interconnection and for each service or network element. This agreement must be approved by the jurisdictional state commission. Any party may request the state commission to act as mediator to settle unresolved differences.

If negotiations fail to produce an agreed-to contract, from the 135th day to the 160th day after the ILEC receives a request for negotiation, the carrier may petition the state commission to arbitrate any open issues. Any petitioning party has the duty to provide the commission with all relevant documents. The non-petitioning party in the arbitration has the opportunity to respond and provide additional information. Unique to these arbitrations, most interconnection agreement proposals begin largely agreed-to, with some provisions in disagreement and necessitating the arbitration request. While the state commission is limited to addressing only the issues presented in the arbitration petition, often these few disputed provisions are interrelated with each other and with already agreed-to language.

The state commission may ask for additional information upon which to make a decision. If additional information is not provided, the state commission may proceed on the basis of the best available information. Any arbitration action by state commission should be completed within nine months after the date the ILEC received its original request for negotiation, unless the parties agree to a different schedule. Any party refusing to negotiate further in the proceedings will be considered as one that failed to act in good faith.

When acting as the arbitrator, a state commission shall ensure that the settlement meets the intent of Section 251, and any rates settled upon will be nondiscriminatory, based on costs, and will include a reasonable profit. Further, the settlement should provide an implementation schedule of the agreed upon terms and conditions.

The rates for Interconnection and Network Element Charges shall be based on the cost of providing the interconnection, will be nondiscriminatory, and may include a reasonable profit.

Charges for transport and termination of traffic will not be considered just and reasonable unless the terms and conditions provide for the mutual and reciprocal compensation by each carrier's costs. Wholesale prices for telecommunications services shall be determined on the basis of retail rates excluding marketing, billing, collection, and other costs that will be avoided by the LEC.

Issue Groupings

Resolved Issues

Since the issue identification was completed, the parties have reached agreement on the following additional issues:

12, 15i, 17i, 21, 26, 28, 31, 39a, 39b, 42, 47, 49, 52, 53b, 63

Billing & Collections

These issues deal with the parties' billing and payment responsibilities. For practical purposes, these provisions are used when AT&T Florida renders a bill for wholesale services to CA. These issues include how and when bills are rendered and due, what information they should contain, what format they should follow, and how and when charges can be disputed.

11, 13A, 13B, 13C, 13D, 21, 22A, 22B, 23A, 23B, 23C, 24i, 24ii, 25, 26, 27, 43, 61

Collocation

These issues involve the placement of CA's equipment inside AT&T Florida's central offices. CLECs collocate equipment such as switches, routers, multiplexers, etc., in ILECs' central offices to serve the CLEC's customers. Collocation provisions disputed in this docket include how, when, and by whom the collocated equipment should be installed or accessed, when applications should be submitted and when fees should be assessed, and safety concerns.

2, 3, 4A, 4B, 5, 6, 7A, 7B, 8, 9A, 9B, 10, 16

Local Interconnection

Local interconnection is the physical connection of two carriers' networks for the mutual exchange of local traffic. The issues disputed include the point at which each party's financial and operational responsibility ends, what facilities and/or services should be required, audits, local number portability, repair issues, and operational support systems.

14A, 14B, 35, 36, 37, 38, 39A, 39B, 40, 41, 42, 45, 46, 47, 48A, 48B, 64

Network Elements and Resale

Incumbent carriers such as AT&T Florida are required by federal statute to offer their networks as unbundled elements, or UNEs, so that CLECs can use parts of the ILECs' networks to construct their own. ILECs are also required to offer their retail services for resale at a wholesale discount for competitors to offer to end users. Disputes in these categories include statutory interpretations, discontinuance, how and when elements are offered, and conversion of UNEs to other wholesale services.

1, 31, 44, 50, 51, 53A, 54A, 54B, 55, 56, 57, 58A, 58B, 59A, 59B, 59C, 60, 62A, 62B, 66

Discussion of Issues

Issue 1: Is AT&T Florida obligated to provide UNEs for the provision of Information Services? (UNE § 4.1)

Recommendation: No. Staff recommends that AT&T Florida is not obligated pursuant to the Act to provide UNEs for the provision of Information Services. (Fogleman)

Position of the Parties

CA: Yes. AT&T permits its own CLEC affiliate to use UNE facilities to provide non-telecommunications services. Therefore, AT&T must permit CA to do the same in a non-discriminatory manner.

AT&T Florida: No. Section 251(c)(3) of the Telecommunications Act of 1996 provides that access to UNEs is for the provision of a telecommunications service. Information services are not telecommunications services, and AT&T has no obligation to provide a UNE solely for the provision of information services, as CA's proposed language would require.

Staff Analysis: The issue addresses whether AT&T Florida is obligated to provide Unbundled Network Elements (UNEs) to CA for the provision of a standalone information service based on the unbundling requirements of the Act. CA believes that it is entitled to use UNEs to provide any service to its end users and that AT&T Florida's affiliates do the same. UNEs are the parts of the telecommunications network that the ILECs are required to offer on an unbundled basis as mandated by the Act. CA has proposed contract language that would allow the use of UNEs "in any technically feasible manner." AT&T Florida argues that the Act limits its unbundling requirements for the provision of telecommunications, not standalone information services.[2] As a result, AT&T Florida has proposed contract language that limits the use of UNEs for the provision "of a telecommunications service."

Parties' Arguments

CA

CA contends that CLECs are entitled to use UNEs to provide any services to end-users, including telecommunications services and information services. (TR 24, TR 73) It asserts that an AT&T Florida affiliate uses UNE facilities for the provision of information services. (TR 24) By comparison, AT&T Florida's proposed language would require CA to provide a telecommunications service in order to provide customers an information service. CA believes that this requirement is anti-competitive and not supported by the Act or FCC regulations. (TR 25)

[2] 47 C.F.R. § 51.5 defines an "information service" as the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operations of a telecommunications system or the management of a telecommunications service. By comparison, a "telecommunications service" is defined as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

CA states that its proposed language (i.e., the use of UNEs "in any technically feasible manner") is necessary for it to compete with AT&T Florida's Metro Ethernet service. CA's intended service would not necessarily include Internet access, but CA desires to be entitled to provide it. (EXH 28, Bates No. 67) Further, CA wishes to provide Internet Access Service in parity with AT&T Florida. AT&T Florida provides various Internet services over copper facilities which CA claims do not have a telecommunications component. (EXH 28, Bates No. 67)

CA expresses concern if AT&T Florida's proposed language is approved, CA would be required to impose federal Universal Service Fund (USF) taxes for its Internet service. The same services from AT&T Florida, according to CA, would not be required to impose a USF tax. (EXH 28, Bates No. 67, EXH 46, Bates No. 1527) This would be clearly unfair to CA and would harm competition by giving AT&T Florida an unfair competitive advantage. (EXH 28, Bates No. 67, BR 6)

As a proposal in its testimony, CA suggests that the Commission should approve language which simply states that UNEs shall be available pursuant to FCC rules. (TR 74) This would make clear, according to CA, that AT&T Florida may not apply more restrictive criteria than permitted, and would provide AT&T Florida with language that restricts CA from any use of UNEs not permitted by FCC rules. (CA BR 7)

AT&T Florida

AT&T Florida argues that the law is clear regarding what an ILEC has to unbundle. Specifically, Section 251(c)(3) of the Act requires ILECs to provide access to UNEs for the provision of a telecommunications service. (TR 540) AT&T Florida contends that CA's proposed language (use of UNEs "in any technically feasible manner") is broader than that of the Act and would require AT&T Florida to provide UNEs solely for the purpose of providing information services. (TR 540)

In 2005, the FCC addressed this issue in an Order according to AT&T Florida. (AT&T Florida BR 7) In that Order, the FCC states: [3]

> Section 251(c)(3) and the Commission's (e.g. FCC) rules look at what use a competitive LEC will make of a particular network element when obtaining that element pursuant to Section 251(c)(3); the use to which the incumbent LEC puts the facility is not dispositive. In this manner, **even if an incumbent LEC is only providing an information service over a facility, we look to see whether the requesting carrier intends to provide a telecommunications service over that facility**. Thus, competitive LECs will continue to have the same access to UNEs, including DS0s and DS1s, to which they are otherwise entitled under our rules, regardless of the statutory classification of service the incumbent LECs provide over those facilities. So long as a competitive LEC is offering an "eligible" telecommunications service–i.e., not exclusively long distance or mobile wireless services–it may obtain that element as a UNE. Accordingly, nothing in this Order

[3] FCC 05-150, CC Docket No. 02-33, Appropriate Framework for Broadband Access to Internet over Wireline Facilities, Report and Order and Notice of Proposed Rulemaking, released September 23, 2005, ¶ 127.

> changes a requesting telecommunications carriers' UNE rights under Section 251 and our implementing rules.

(emphasis added by AT&T Florida)

To the extent CA only wants to provision an information service, AT&T Florida notes that CA may self-provision facilities, lease them from third parties, or lease them from AT&T Florida's intrastate Special Access Tariff. (TR 541)

Analysis

Section 251(c)(3) of the Act limits unbundling obligations to telecommunications services. (TR 539) Section 251(c)(3) provides:

> UNBUNDLED ACCESS-The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this Section and Section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

This is consistent with the FCC's Order (FCC 05-150) that conditions the unbundling obligation based on" … whether the requesting carrier intends to provide a telecommunications service over that facility."[4] The FCC's rule in 47 C.F.R. § 51.307(c) states that ILECs must provide access to UNEs "in a manner that allows the requesting carrier to provide any **telecommunications service** that can be offered by means of that network element." (emphasis added) (TR 540) Similarly, 47 C.F.R. § 51.309(d) states that an ILEC must provide access to UNEs so a CLEC "may provide any **telecommunications service**" over the UNE. (emphasis added) (TR 540) These references condition the availability of UNEs as it relates to the provisioning of a telecommunications service, not an information service.[5]

AT&T Florida argues that as long as CA uses a UNE to provide a telecommunications service, it can also use the same UNE for an information service. However, CA cannot use a UNE for an information service alone. (TR 604)

Regarding CA's proposal to allow CA to provide any services allowed by the FCC's rules and regulations rather than parsing regulatory distinctions, staff notes that there is no proposed language offered in the record to be considered. The only record evidence provides that CA

[4] Ibid.

[5] While the FCC's Open Internet Order has recently reclassified broadband Internet access service as a telecommunications service under Title II of the Communications Act, the Order expressly forbore from any regulatory unbundling obligations. This point was agreed on by both parties. (EXH 38, Bates No. 701; EXH 46, Bates No. 1529) Furthermore, the rules from the Open Internet Order, while public, had not taken effect at the time of the hearing and are currently being challenged in court. (EXH 38, Bates No. 701)

would offer such a proposal through its counsel. (TR 74) Finally, AT&T Florida's proposed language (i.e., the provision of UNEs "of a Telecommunications Service (Act, Section 251(c)(3))" reflects the relevant Federal Law relating to the issue.

Regarding a universal service assessment fee, assessments are made on telecommunications revenue. Thus to the extent that CA offered a bundled service that included an information service and a telecommunications service, CA would only have to assess a "USF tax" on the telecommunications component. (EXH 46, Bates No. 1528)

Pursuant to Section 251(c)(3) of the Act, unbundling obligations are limited to telecommunications services. AT&T Florida, however, agrees to allow CA to provide information services over a UNE as long as CA also provides telecommunications service over the UNE. Staff believes that AT&T Florida's proposed ICA language is appropriate for this issue.

Conclusion

Staff recommends that AT&T Florida is not obligated pursuant to the Act to provide UNEs for the provision of Information Services.

Issue 2: Is Communications Authority (CA) entitled to become a Tier 1 Authorized Installation Supplier (AIS) to perform work outside its collocation space? (Collocation § 1.7.3)

Recommendation: No, staff recommends CA is not entitled to become a Tier 1 Authorized Installation Supplier to perform work outside its collocation space. (Hawkins, Long)

Position of the Parties

CA: Yes. AT&T requires CA to be an AIS to construct CLEC collocations. CA should be entitled to become certified as an AIS for collocation construction, or AT&T should be required to provide the construction elements to CA at TELRIC prices if CA is denied the right to be an AIS.

AT&T Florida: No. CA is not "entitled" to become a Tier 1 AIS. CA may apply to become an AIS in the same manner as anyone else. If CA only wants to perform work within its own collocation space, it can become a Tier 2 AIS.

Staff Analysis: AT&T Florida has developed a two-tiered process for AIS certification. Tier 2 AIS certification allows an entity to perform work inside its own collocation space. A one-day training course is all that is required to become a Tier 2 AIS. AT&T Florida is currently accepting applications for Tier 2 AIS certification. (TR 542, 695, EXH 36, Bates Nos. 540-541)

Tier 1 certification allows an entity to perform work anywhere within any central office (CO) in AT&T's 21 state footprint.[6] The qualifications and training are much more rigorous at this level. Certifications can take nine months to a year to complete. (EXH 36, Bates Nos. 625-626) Witness Kemp states that AT&T currently has 87 entities certified at the Tier 1 level. (TR 541, 695) Witness Kemp confirms that AT&T Florida is not accepting Tier 1 AIS applications at this time. (EXH 36, Bates No. 542)

This issue questions whether CA should be entitled to become a Tier 1 Authorized Installation Supplier (AIS) to perform work outside its collocation space. CA believes that it should be allowed to apply to become a Tier 1 AIS using standard criteria. AT&T Florida believes that there are enough Tier 1 vendors in its territory and it is not accepting any more applications.

Witness Kemp states that AT&T Florida does not perform its own installations, or those of other CLECs in AT&T Florida's central offices. It contracts out this labor to Authorized Installation Suppliers. (TR 542)

Parties' Arguments

CA

CA witness Ray testifies that, because of AT&T Florida's policies, CA needs to be certified as an AIS in order to install its own equipment in AT&T Florida's central offices. (TR 25) Witness Ray also states that, in many areas, AT&T Florida has approved a very limited number of AIS contractors, and has refused to permit, in its sole discretion, any new entrants to become certified as an AIS. (TR 25) Witness Ray also testifies that the predominant AIS contractors are affiliated

[6] A central office is the building that houses the ILEC's local switching facilities for a local calling area.

with AT&T Florida; they maintain offices inside AT&T Florida central offices and perform work for AT&T Florida on a routine basis. In those cases, the cost of using an AIS is often prohibitive for a CLEC, who may itself possess the same technical skills and abilities as the AIS. (TR 25, 74-75) This is especially true when the CLEC only needs minor work such as a short optical cable run within the central office and the AIS imposes a minimum job cost upon the CLEC which is much greater than the actual value of the work required. (EXH 46, Bates No. 1532) Witness Ray believes this creates an artificial barrier to entry for CLECs. (EXH 46, Bates No. 1531) Finally, witness Ray offers a "reasonable solution" by recommending that the parties set TELRIC-based collocation rates.[7] (TR 25-26)

AT&T Florida

AT&T Florida's witness Kemp states that AT&T Florida's language requires AT&T Florida to consider CA's application to become an AIS within a reasonable time using criteria no more restrictive than AT&T Florida applies to any other applicant. (TR 684) CA's language, however, appears to state that CA shall be *entitled* to become an AIS. CA's language must be rejected, because neither CA nor anyone else is entitled to become an AIS. (TR 541)

Witness Kemp testifies that no entity has an inherent right to become a Tier 1 AIS. (TR 541) Witness Kemp went on to explain that there is no shortage of vendors; there are 87 vendors on the Tier 1 list as of January 2015, each of which is authorized to perform work in any AT&T central office in the country. (TR 543, 607) Witness Kemp states that AT&T Florida is not accepting Tier 1 applications at this time. (EXH 36, Bates No. 542) Witness Kemp further states that, if CA wants to do work in its own collocation space, it can become a Tier 2 AIS rather easily. (TR 607) Finally, witness Kemp argues that there is no basis for applying the TELRIC standard to collocation construction costs. (TR 605)

Analysis

Staff believes no entity is entitled to become an AIS, as this issue is worded. However, staff is also concerned that AT&T Florida's refusal to accept any new Tier 1 applications, apparently for some time, could be construed as a de facto unreasonable restriction in violation of FCC rules. Staff believes that AT&T Florida's obligations regarding Tier 1 applications are already delineated in agreed-to language elsewhere in the proposed agreement, and no additional language in this section (Collocation § 1.7.3) is necessary.

CA does not appear to disagree with AT&T Florida's underlying position that CA should be subject to the same criteria as any other entity when applying for Tier 1 AIS certification. CA witness Ray states that CA should be treated like any other applicant. (TR 75) However, he asserts that CA was not even allowed to apply to become a vendor. Witness Ray further states that, while working with other CLECs, AT&T Florida repeatedly refused to accept applications to become a Tier 1 AIS over several years. Witness Ray testifies that in 2008, 2013, and again in 2014, AT&T Florida stated to him that it was not accepting Tier 1 applications. (EXH 31, Bates No. 195)

[7] TELRIC = Total Element Long Run Incremental Cost, the cost standard required by 47 U.S.C. § 252(d)(1) and used by the FCC in 47 C.F.R. § 51.505 for states to set rates for Unbundled Network Elements (UNEs) and collocation.

AT&T Florida does not refute witness Ray's allegation that it has been some time since it has accepted applications. Witness Kemp did not know when the last time AT&T Florida accepted an application. (EXH 50, Bates No. 1910) Witness Kemp argues that there are plenty of Tier 1 vendors available, and that there have been no complaints that a shortage of vendors exists.

CA argues in its brief that a refusal to accept any applications for contractor certification is a violation of federal rules. (CA BR 11) 47 C.F.R. §51.323(j) states:

> An incumbent LEC shall permit a collocating telecommunications carrier to subcontract the construction of physical collocation arrangements with contractors approved by the incumbent LEC, provided, however, that the incumbent LEC shall not unreasonably withhold approval of contractors. Approval by an incumbent LEC shall be based on the same criteria it uses in approving contractors for its own purposes.

CA states AT&T Florida is unreasonably withholding approval of contractors by refusing to accept applications. (CA BR 11) Because of CA witness Ray's testimony that AT&T Florida was not accepting Tier 1 applications in 2007, 2013, and again now, coupled with AT&T Florida witness Kemp's testimony that she did not know when the last time a Tier 1 application was accepted, staff believes that it is possible that AT&T Florida has not accepted any Tier 1 applications since at least 2007. Staff believes that this long-term refusal could be construed as an unreasonable withholding of contractor approval, which would be a violation of 47 C.F.R. §51.323(j).

Staff believes that AT&T Florida is already obligated to make available its Tier 1 AIS approval program to CA. Collocation § 3.29.1, agreed to by both parties, states, in part:

> AT&T-21STATE shall make available its supplier approval program to Collocator or any supplier proposed by Collocator and will not unreasonably withhold approval. All work performed by or for Collocator shall conform to generally accepted industry standards.

Staff believes this provision makes it clear that CA is entitled to have the Tier 1 (and Tier 2) approval program made available to it. Staff believes that a position of "AT&T Florida is not currently accepting applications for Tier 1 vendor status" as stated by witness Kemp is inconsistent with this agreed-to language. Collocation § 3.29.1's language does not mean that CA is entitled to "become" a Tier 1 AIS as this issue states. It is possible that CA will not pass the qualifying tests or otherwise not complete the program.

Staff recommends that neither party's proposed language for this issue be approved. The availability of the Tier 1 program is made clear in an undisputed provision, making any language in this provision unnecessary.

Regarding CA's proposal for TELRIC-based rates, AT&T Florida witness Kemp also argues "AT&T Florida must provide collocation to CA at TELRIC-based rates (47 U.S.C. §251(c)(6)), but the work that is the subject of CA's proposal is not collocation and there is no requirement that that work be performed at TELRIC-based rates." (TR 605) Staff agrees. The proposed agreement's Pricing Schedule lists collocation elements such as floor space, application fees, cross-connects, power, and space preparation. (EXH 2) Construction costs are not listed in the proposed Pricing Schedule, indicating they are not priced at TELRIC-based rates. Staff notes they are also not listed in the pricing schedules of any other effective interconnection agreement presented in this case.

Staff recommends that neither party's proposed language for this issue be approved. The availability of the Tier 1 program is made clear in undisputed Collocation § 3.29.1, making both parties' proposed language in this provision (Collocation § 1.7.3) unnecessary.

Conclusion

Staff recommends CA is not "entitled" to become a Tier 1 Authorized Installation Supplier to perform work outside its collocation space.

Issue 3: When CA supplies a written list for subsequent placement of equipment, should an application fee be assessed? (Collocation § 3.17.3.1)

Recommendation: No. When CA supplies a written list for subsequent placement of equipment, an application fee should not be assessed. (Hawkins)

Position of the Parties

CA: No. CA believes AT&T should not be entitled to charge application fees, review fees, or any other fees, when CA simply submits updated equipment records to AT&T when changing CA's own equipment.

AT&T Florida: No. As the parties agree, AT&T will not charge an additional or separate fee pursuant to Collocation § 3.17.3.1 when CA supplements its original Equipment List with new equipment. AT&T's proposed language succinctly and accurately reflects this position, while CA's is vague and subject to misinterpretation.

Staff Analysis: This issue addresses whether the words "AT&T Florida shall not charge any separate fee for review under this subsection" (AT&T Florida's proposal) or "CLEC shall not be charged for submission of the attachment to the Equipment List or for this review process, regardless of outcome" (CA's proposal) should be added to the end of Collocation § 3.17.3.1. CA believes it should not be charged an additional application fee, review fee or any other fee, if CA does not require or order anything from AT&T Florida, but only submits an updated equipment record. AT&T Florida substantially agrees with this point, but does not agree to CA's proposed language.

Parties' Arguments

CA

Witness Ray states that CA offered its proposed language to ensure that cable records charges are always cost-based and to remove a barrier to entry. (TR 26) Also, witness Ray believes that AT&T Florida incurs no cost when a CLEC changes out one piece of equipment for another. (TR 76) He further states that AT&T Florida is not entitled to reject NEBS[8]-compliant equipment for safety reasons, and that if AT&T Florida believes the equipment in unnecessary for collocation, then that is an AT&T Florida business decision and the CLEC should not bear the cost for it. (TR 76-77)

AT&T Florida

Witness Kemp testifies that AT&T Florida does not impose an additional charge on CA for review of CA-furnished equipment that does not appear on the All Equipment List. Witness Kemp proposes language that she hopes resolves this issue. (TR 543-544) AT&T Florida believes that CA's proposed language is unclear and "could be interpreted to override the parties' agreement that application fees are required for initial collocation applications." (AT&T Florida BR 13)

[8] NEBS = Network Equipment-Building System, a set of safety, spatial and environmental design guidelines applied to telecommunications equipment in the United States.

Analysis

AT&T Florida witness Kemp believes that the parties substantially agree on this issue, and offers language in her direct testimony. (TR 543-544) While each party's language is similar to the other's, staff believes that AT&T Florida's proposed language should be included in the agreement.

CA witness Ray testifies that "cables records charges" imposed by AT&T Florida create an artificial barrier to entry for CLECs:

> AT&T has a history of charging CLECs more to enter the records for new cross-connect cables into its databases than the actual materials and labor costs for the same installation. These "cables records charges" are not cost-based and are in fact an artificial barrier to entry for CLECs created by AT&T. CA is aware of no other ILEC in Florida which charges anything for entering cable records into its own systems.

(TR 26)

Witness Kemp testifies that CA may misunderstand the meaning of this section. Witness Kemp's rebuttal testimony addresses this possibility:

> It is unclear to me how cable records charges relate to the issue and what point Mr. Ray is attempting to make. Issue 3 relates to whether an application fee is charged when CA proposes to collocate equipment that is not already on the approved All Equipment List. In my Direct Testimony, AT&T Florida offered proposed language that should resolve this issue as it is framed.

(TR 608)

Staff believes that witness Kemp's analysis of the section at issue here is correct. Collocation §3.17.3.1 specifically applies "(w)hen the collocator's equipment is not listed in the All Equipment List (AEL). . . ." Staff believes that CA has either misunderstood the application of this section, or is attempting to expand its meaning. AT&T Florida has agreed that any review under this section will not incur an additional charge.

Staff also believes CA's proposed language is unclear. In particular, staff believes that the words "submission of the attachment to the Equipment List" could be construed to apply to more than this section. Staff believes AT&T Florida's proposed language should be incorporated into the agreement.

Conclusion

Staff recommends that when CA supplies a written list for subsequent placement of equipment, an application fee should not be assessed.

Issue 4A: If CA is in default, should AT&T Florida be allowed to reclaim collocation space prior to conclusion of a dispute regarding the default? (Collocation § 3.20.1)

Recommendation: No. AT&T Florida should not be allowed to reclaim collocation space prior to conclusion of a dispute regarding the default unless it is for legitimate safety reasons. (Hawkins, Long)

Position of the Parties

CA: No. AT&T's language allows AT&T to unilaterally act against CA, potentially threatening CA's existence, without first providing an opportunity for CA to contest the assertion that it is in default. The Commission's recently approved accelerated dispute resolution process would be available to either party for resolution of time-sensitive issues.

AT&T Florida: Yes. The ICA should not require AT&T to bear the safety, operational and economic risks of CA being in material default while dispute resolution is ongoing. CA has 60 days to cure its material default and has an available remedy if it believes it has not materially defaulted.

Staff Analysis: This issue addresses if CA is in material default of its collocation obligations, should AT&T Florida be allowed to reclaim CA's collocation space prior to the conclusion of the dispute resolution. AT&T Florida believes that it should be able to reclaim collocation space 60 days after it determines a material default has occurred. CA maintains that the agreement's dispute resolution process should be followed and completed before any action is taken.

Parties' Arguments

CA

Witness Ray argues AT&T should be required to use the agreement's dispute resolution process to resolve disputes. (TR 27) Additionally, witness Ray claims that the Commission has an accelerated dispute resolution process which would be available for time-sensitive issues. (TR 27, 77) Witness Ray states that AT&T Florida should not have the unilateral right to take action against CA, bypassing the dispute resolution process. Witness Ray further argues that AT&T has proven that it can erroneously take such action, harming a competitor. (TR 27, 78-79)

AT&T Florida

Witness Kemp asserts that, to avoid reclamation of collocation space, "(f)irst and foremost, CA can cure its default." (TR 546) Second, CA may initiate a proceeding to temporarily bar AT&T Florida from reclaiming the space. (TR 546) Witness Kemp further testifies that AT&T Florida is well aware of the enormous liability it would face if it was in error, so it would proceed with extreme caution. (TR 547) Also, witness Kemp states that allowing the equipment to remain would subject AT&T Florida to "prolonged and possibly dangerous defaults by CA." (TR 547)

Analysis

This issue involves Collocation § 3.20.1, which discusses if CA has disputed a default, should AT&T be allowed to reclaim CA's collocation space prior to the conclusion of the dispute resolution. AT&T Florida believes AT&T Florida should be able to reclaim CA's collocation space prior to the dispute resolution. CA argues that AT&T Florida should not be able to reclaim the collocation space prior to the conclusion of the dispute resolution.

Staff believes the dispute resolution process in the proposed agreement is an important element regulating how the parties behave during a dispute. Staff wants to ensure that AT&T Florida's proposed language does not attempt to bypass this process and give AT&T Florida the unilateral ability to act as if it has prevailed in a dispute before that determination has been made, unless there is a compelling reason to do so.

To determine whether the dispute resolution process should be followed in this issue, staff believes it is important to first develop a reasonable definition of "default". AT&T witness Kemp states that AT&T does not have categories of "default," therefore, it adjusted its pertinent contract language so that the remedies made available by Section 3.20.1 and 3.20.2 apply only to "material" defaults.[9] (TR 546) Witness Kemp provides two examples of a material default. The first example is a financial default–CA owes AT&T Florida amounts for collocation. The second example is a safety default. Witness Kemp testifies:

> For instance, if CA fails to pay material amounts it owes for collocation services, AT&T Florida should not have to incur additional financial loss by allowing CA to remain collocated or to obtain additional collocation space that it cannot or will not pay for. Similarly, if CA's default is a failure to follow safety requirements that protect the personnel or equipment of other collocators, and of AT&T Florida, CA should not be allowed to continue to collocate, and to continue the violation – and the endangerment of those personnel or equipment – during the potentially very long period while CA is disputing the violation through appeals.

(TR 545)

AT&T Florida did not provide any other examples of what would constitute a material default for collocation. Staff agrees those are the two practical instances where a default may occur.

The first example proposed by AT&T Florida occurs if CA fails to pay material amounts it owes for collocation services. Staff agrees if material amounts are owed and not payed or disputed, AT&T Florida's proposed language would not allow CA to remain collocated or to obtain additional collocation space. However, if CA has properly disputed any amounts, staff does not believe the disputed amounts can constitute a material default.

Staff's recommendations in other issues, as well as other agreed-to language in the proposed agreement, should encompass financial disputes between the parties, negating any practical need

[9] AT&T Florida qualified its addition of the word "material" as applicable only if CA's proposed language for Issues 4A and 4B is rejected. (BR 14)

to deviate from the dispute resolution process. In Issue 23, staff recommends that AT&T Florida's proposed escrow provisions be included in the agreement. AT&T Florida has proposed that disputed amounts that total $15,000 or less can be withheld by CA pending the dispute. If total disputes are over $15,000, those amounts should be deposited into an escrow account pending the resolution of the dispute. Therefore, if CA properly disputes collocation charges and deposits the proper amounts into escrow, staff does not believe any disputed amounts can be considered a material default as it applies to this issue. If CA does not comply with the proposed escrow provisions (e.g. does not pay disputed amounts over $15,000 to AT&T Florida or into escrow), AT&T can enforce the nonpayment/discontinuance of service sections in the proposed agreement.

Extraordinary financial circumstances, such as bankruptcy, are covered in a separate clause within this section (Collocation § 3.20.1). AT&T Florida's proposed language "or if the Collocator is declared bankrupt or insolvent or makes an assignment for the benefit of creditors. . ." will cover these events. This proposed language is not disputed between the parties. Therefore, staff believes there is no reason to deviate from the dispute resolution process for financial disputes under this section (Collocation § 3.20.1).

In a practical sense, if financial situations are covered by other sections of the proposed agreement, that leaves the other likely instance of a material default: safety. When questioned by staff in her deposition, AT&T Florida witness Kemp emphasizes that safety is the main concern here:

> Q Would AT&T Florida not have the dispute resolution as a recourse?
> A In a situation where the safety of individuals in the central office is at stake, that is a very lengthy process and so we rely on this term in this contract to deal with those issues.
> Q So safety issues would be AT&T Florida's main concern?
> A That would be. . . .
> Q What would be the consequences of using the dispute resolution process?
> A Well, in our view, it would take a very long time. And with safety at stake, we worry about the safety of employees for AT&T and all their CLECs and the equipment for AT&T and any other collocator in that area, so it's a timing issue.
> Q That timing concern would apply to safety issues?
> A Yes.
> Q Are there any other categories where timing would be a concern?
> A There might be, but safety really is our focus when it comes to collocation. (EXH 50, Bates Nos. 1920-1921)

Staff agrees legitimate safety concerns can make the timing of initiating action critical. Staff is concerned, however, if safety is the focus of this section, a 60-day grace period to rectify a material safety default seems like a long time. However, both parties have agreed to this period.

Staff believes the dispute resolution process in the proposed agreement should be followed, unless there is a compelling reason to not do so. Staff believes legitimate safety concerns can be such a compelling reason.

Witness Kemp testifies that AT&T Florida will be extremely judicious in its application of this section, and not use it as a device to circumvent the dispute resolution process. Witness Kemp states:

> Well, AT&T doesn't take this kind of thing lightly and it would be a very serious, it would be taken very seriously. And it wouldn't be anything minor, it would be a material default. And we feel that CA would have plenty of time to cure the default in those 60 days, or at least start up a conversation with AT&T to work on the issue. (EXH 50, Bates No. 1920)

Staff believes the potential liability AT&T Florida faces if it is in error will sufficiently restrict its use of this section (Collocation § 3.20.1). Staff believes, although AT&T Florida's language appears appropriate for this issue, it does not give AT&T Florida the unilateral right to reclaim collocation space unless there is a legitimate safety concern. As discussed, any financial disputes should be covered within other sections' language proposed by staff. Based on staff's recommendations in and interpretation of other sections of the proposed agreement, staff believes AT&T Florida's proposed language for this section (Collocation § 3.20.1) is appropriate.

Conclusion

Staff recommends AT&T Florida should not be allowed to reclaim collocation space prior to conclusion of a dispute regarding the default unless it is for legitimate safety reasons.

Issue 4B: Should AT&T Florida be allowed to refuse CA's applications for additional collocation space or service or to complete pending orders after AT&T Florida has notified CA it is in default of its obligations as Collocator but prior to conclusion of a dispute regarding the default? (Collocation § 3.20.2)

Recommendation: No. AT&T should not be allowed to refuse CA's applications for additional collocation space or service or to complete pending orders after AT&T Florida has notified CA it is in material default of its obligations as collocator but prior to conclusion of a dispute regarding the material default, unless it is for legitimate safety reasons. (Hawkins, Long)

Position of the Parties

CA: No. AT&T's language allows AT&T to unilaterally act against CA, potentially threatening CA's existence, without first providing an opportunity for CA to contest the assertion that it is in default. The Commission's recently approved accelerated dispute resolution process would be available to either party for resolution of time-sensitive issues.

AT&T Florida: Yes. AT&T is subject to significant safety, operational and economic risks when CA materially defaults. The ICA should not require AT&T to accept CA's applications or complete its orders while dispute resolution is ongoing. CA has an available remedy if it believes it has not materially defaulted.

Staff Analysis: This issue is similar to Issue 4A, but it addresses whether AT&T Florida should be allowed to refuse additional collocation space prior to the conclusion of a dispute resolution process if CA disputes the alleged default. CA states that AT&T Florida should not be allowed to refuse service until the dispute resolution process is complete. AT&T Florida believes that it should not be forced to provide additional collocation services to CA if CA is in default.

Parties' Arguments

CA

Witness Ray argues Issues 4A and 4B together. Witness Ray believes AT&T Florida should be bound by the dispute resolution process in the agreement. (TR 77)

AT&T Florida

Witness Kemp also argues Issues 4A and 4B together. Additionally, AT&T Florida states in its brief that Issue 4B should be resolved in favor of AT&T Florida for a different reason. Because the remedies provided by this section are so modest–refusal to complete pending collocation orders or process new ones–AT&T Florida should be able to proceed without awaiting a dispute resolution proceeding. (AT&T Florida BR 16)

Analysis

This issue is similar to Issue 4**A;** however, the difference is this issue addresses whether AT&T Florida should be allowed to refuse CA's applications for additional collocation space or service or to complete pending orders after AT&T Florida has notified CA it is in default of its obligations as Collocator but prior to conclusion of a dispute regarding the default and CA disputes the alleged default.

As discussed in Issue 4A, staff believes the dispute resolution process in the proposed agreement is an important element regulating how the parties behave during a dispute. Staff wants to ensure AT&T Florida's proposed language does not attempt to bypass this process and give AT&T Florida the unilateral ability to act as if it has prevailed in a dispute before that determination has been made, unless there is a compelling reason to do so.

Staff believes the same rationale used in Issue 4A should be used in the instant issue. Financial disputes will be covered by staff's recommendations in other issues. Legitimate safety concerns may be the exception, so long as AT&T Florida continues its commitment to be extremely cautious in exercising its narrow privilege under this section. Staff believes, because of the protections for disputed amounts in other sections of the proposed agreement, AT&T Florida's proposed language should be approved.

Conclusion

Staff recommends AT&T Florida should not be allowed to refuse CA's applications for additional collocation space or service or to complete pending orders after AT&T Florida has notified CA it is in material default of its obligations as collocator but prior to conclusion of a dispute regarding the material default, unless it is for legitimate safety reasons.

Issue 5: Should CA be required to provide AT&T Florida with a certificate of insurance prior to starting work in CA's collocation space on AT&T Florida's premises? (Collocation § 4.6.2)

Recommendation: Yes, CA should be required to provide AT&T Florida with a certificate of insurance prior to starting work in CA's collocation space on AT&T Florida premises. (Hawkins)

Position of the Parties

CA: AT&T's language requiring insurance to be obtained within five days is not feasible. CA cannot obtain insurance within five days; it takes much longer to obtain this coverage in Florida and most insurance carriers have refused to write such coverage for CLECs.

AT&T Florida: The issue statement does not capture the actual disagreement, because CA has agrees to provide a certificate of insurance before it starts work. The disagreement is how long CA should have to cure the delinquency if it breaches that obligation. Five business days is sufficient.

Staff Analysis: This issue is related to Issue 15 regarding hazard insurance for collocation work. Both parties agrees that a certificate of insurance stating the types of insurance and policy limits provided must be received prior to commencement of any work. The actual disagreement in the instant issue concerns the situation in which CA breaches its obligation to provide an insurance certificate before it starts work. In that scenario, both parties agree that CA must cure its breach, but the parties disagree on how long CA should have to do so. AT&T Florida proposes that CA should have five business days. CA proposes 30 calendar days.

Parties' Arguments

CA

Witness Ray states two reasons why five days is not feasible to obtain insurance: (1) CA cannot obtain coverage insurance within five days as it takes much longer to obtain this coverage in Florida; and (2) Most insurance carriers have refused to write such coverage for CLECs. (TR 27)

Witness Ray further gives a scenario that if CA has applied to install a collocation or has applied to attach to AT&T Florida's poles or use AT&T Florida's conduits; it agrees that it may not commence any work for any length of time or any time while its insurance is not in force. In this example, CA believes that there is no harm in allowing 30 days to get insurance because there is no risk during this period because no work has commenced. (EXH 46 P 01538)

Witness Ray argues in his testimony that CA's proposed language prevents AT&T Florida from creating arbitrary costs it seeks to propose on CA while CA is working to meet the insurance requirements in good faith prior to commencement of the applicable service. (TR 28)

AT&T Florida

Witness Kemp testifies that both parties agree in Collocation § 4.6.2 that, "A certificate of insurance stating the types of insurance and policy limits provided the Collocator must be received prior to commencement of any work." Therefore, CA must provide a certificate of insurance before it can start work in a collocation space. This stands to reason, because the required insurance is necessary to protect personnel and equipment in the collocation space and CO. (TR 547-548)

Witness Kemp further states:

> (t)he disagreement only comes into play when CA breaches this obligation. In that scenario, CA must cure its breach, but the parties disagree on how long CA should have to do so. AT&T Florida proposes that CA should have five business days. To allow CA 30 days to cure its breach while CA continues to work in the collocation space, could possibly create dangers against which the agreed insurance is supposed to protect, and would make a mockery of the parties' agreement that insurance must be in place before work begins. If CA breaches that obligation, it would be perfectly reasonable to require CA to stop work until it obtains insurance and provides the required certificate. The five-day grace period that AT&T Florida proposes is generous, and is sufficient for CA to cure its breach.

(TR 548)

Witness Kemp further testifies that she does not believe that CA will have difficulty obtaining the required insurance as CLECs have been required to obtain insurance prior to collocating in AT&T Florida's premises for nearly 20 years. Witness Kemp states other CLECs have not expressed concerns about complying, and AT&T Florida has not had issues with CLEC non-compliance. Furthermore, if CA thinks it will have trouble obtaining insurance, it should not have agreed to language requiring it to obtain insurance. (TR 550)

Analysis

Whether a certificate is required is not disputed by the parties as both parties have agrees that a certificate of insurance is required. Should CA breach its obligation, staff believes that five days is reasonable.

Staff notes that CA witness Ray did not provide any proof or documentation to justify why five days is not feasible to obtain the required insurance after commencement of work and receipt of a deficiency notice. AT&T Florida witness Kemp also testifies that other CLECs have been collocating in AT&T Florida's premises for nearly 20 years and have had to adhere to similar insurance requirements and have not expressed any concerns about complying. (TR 549) Also, staff further notes that CA is in control of the collocation schedule and when it files its application, it may delay the work until insurance is acquired. If CA chooses to begin work prematurely, staff believes it should cure this breach as soon as the deficiency notice is received.

CA witness Ray suggests CA would not be able to obtain insurance in five days, and that it may be difficult for CA to obtain insurance at all. (TR 27) However, CA is contractually obligated, by its own agreement, to obtain insurance *before* it starts work. The five days comes into play only after AT&T Florida notifies CA that it breached that obligation. AT&T Florida witness Kemp states that CA is in control of the timing of its collocation work and can make arrangements for insurance well in advance of starting work. (TR 549)

AT&T Florida witness Kemp testifies that, "It is essential for CA to carry insurance in order to protect against the financial consequences of insurable events." (TR 548) If CA breaches that obligation, it would be perfectly reasonable to require CA to stop work until it obtains insurance and provides the required certificate. (TR 548)

Staff believes AT&T Florida's argument should prevail on this issue. CA controls the collocation schedule by when it files the application; it can use whatever time is necessary to secure insurance before it applies to AT&T Florida for collocation. If CA chooses not to do this, and begins work without a certificate of insurance, the five day grace period that AT&T Florida proposes is sufficient for CA to cure its breach.

Staff believes AT&T Florida's proposed language for this issue (Collocation § 4.6.2) is appropriate. Both parties agree to have insurance before work begins, therefore, CA should be required to provide AT&T Florida with a certificate of insurance prior to starting work in CA's collocation space on AT&T Florida premises.

Conclusion

Staff recommends that CA should be required to provide AT&T Florida with a certificate of insurance prior to starting work in CA's collocation space on AT&T Florida premises.

Issue 6: Should AT&T Florida be allowed to recover its costs when it erects an internal security partition to protect its equipment and ensure network reliability and such partition is the least costly reasonable security measure? (Collocation § 4.11.3.4)

Recommendation: Yes, AT&T Florida should be allowed to recover its cost when it erects an internal security partition to protect its equipment and ensure network reliability and such partition is the least costly reasonable security measure. (Hawkins)

Position of the Parties

CA: No. AT&T proposes to charge CA for arbitrary construction costs entirely unrelated to CA's collocation in an AT&T CO. CA has added language clarifying that AT&T may only bill CA for security upgrades if those upgrades are in response to CA's proven misconduct.

AT&T Florida: Yes. AT&T would only erect a security partition if that is the least costly, most reasonable security measure under the circumstances. If CA's presence (or the presence of CA's equipment) necessitates the erection of a security partition, CA should bear the cost.

Staff Analysis: This issue addresses whether CA should pay AT&T Florida if AT&T Florida installs an additional barrier between CA's equipment and the equipment of another carrier. CA does not believe it should be financially obligated as denoted in the proposed agreement. AT&T Florida wants the option at its discretion to erect such a barrier at the CLEC's expense.

Parties' Arguments

CA

Witness Ray testifies that CA believes that AT&T Florida's ICA proposed language to charge CA for a security partition is inappropriate because it is (1) unnecessary, (2) unlawful, and (3) imposes an arbitrary, non-cost-based financial obligation upon its competitor to increase CA's operational costs. (TR 28) He further states that AT&T Florida witness Kemp testifies that AT&T Florida has never in its history erected an internal security partition. (TR 552)

CA witness Ray states that "AT&T Florida is solely in control of where CA's collocations are placed within the AT&T Florida CO and AT&T Florida COs already have a "CLEC Collocation Area" which is already segregated from AT&T Florida's own equipment." AT&T Florida's language is further inappropriate to the extent that it seeks to impose a cost upon CA as a result of AT&T Florida changing its mind about the initial placement of CA's collocation through no fault of CA. (TR28)

AT&T Florida

Witness Kemp testifies the agreed language is eminently fair and reasonable: If AT&T Florida chooses to erect a security partition to separate CA's equipment from other carriers' equipment (including its own), it can recover the cost only if it demonstrates that other reasonable security methods cost more, and AT&T Florida cannot charge CA for both the partition and an additional security measure. (TR 551) The agreed upon language allows AT&T Florida to erect a security partition to segregate CA's equipment in the described (and very limited) circumstances, and provides that CA will bear the costs. Furthermore, the agreed upon language requires that the security partition be "reasonable," that AT&T Florida may recover the costs instead of the costs of other reasonable security measures only if the partition costs are lower than the costs of those other reasonable security measures. (TR 551)

Analysis

AT&T Florida witness Kemp points out that a partition is a physical barrier that separates a CLEC's or AT&T Florida's space. It can range from a wire mesh cage screen to fully framed walls. (TR 551) Witness Kemp states:

> The agreed language regarding security partitions follows that approach, by allowing AT&T Florida to recover the cost of a security partition only 'if the partition costs are lower than the costs of any other reasonable security measure for such Eligible Structure.' The agreed language further provides that the Collocator will not 'be required to pay for both an interior security partition . . . and any other reasonable security measure for such Eligible Structure.'

(TR 551)

Staff notes that according to witness Kemp, AT&T Florida has never had to erect an internal security partition, but AT&T Florida believes it is necessary to have that option due to environmental or safety conditions. (TR 552) Because of this, staff believes the likelihood of needing a partition is very small. While the likelihood of this section being invoked is remote, staff believes that AT&T Florida's proposed language for Collocation § 4.11.3.4 is appropriate.

Conclusion

Staff recommends AT&T Florida should be allowed to recover its cost when it erects an internal security partition to protect its equipment and ensure network reliability and such partition is the least costly reasonable security measure.

Issue 7A: Under what circumstances may AT&T Florida charge CA when CA submits a modification to an application for collocation, and what charges should apply? (Collocation § 7.4.1)

Recommendation: AT&T Florida may charge CA an application fee when CA makes a substantive change to a collocation application. (Hawkins)

Position of the Parties

CA: AT&T's proposed language permits AT&T to repeatedly charge application fees, even if AT&T has rejected the application improperly or if the resubmission of the application does not dramatically increase AT&T's costs. CA believes that the initial application fee is more than adequate to cover those costs.

AT&T Florida: AT&T should be allowed to charge CA for reviewing each modification to an application, including when AT&T requests the modification and when the modification does not change the number, type or size of cables, floor space, or cost. AT&T only requests modifications when necessary and must review each modification request.

Staff Analysis: This issue addresses whether CA should be charged by AT&T Florida for each revised collocation application that it submits to AT&T Florida for review, whether it's an initial application or a modified application.

Parties' Arguments

CA

Witness Ray testifies that since collocation is intended to be TELRIC-based, CA believes AT&T Florida's language is inappropriate. Witness Ray argues that AT&T Florida has not shown that its costs for a second cursory review of the same application are not covered by the initial application fee. Witness Ray also states that AT&T Florida's rationale that a substantial fee for resubmitting applications provides incentives for CLECs to get it right the first time is illogical: CLECs want the collocation application approved so they can serve their customers. Witness Ray testifies that, in his experience, AT&T Florida is more likely to request a change due to its own errors than ones made by CLECs.

AT&T Florida

Witness Kemp argues that AT&T Florida will request a revision or modification only if AT&T Florida determines, after reviewing the original application, that a change is necessary for technical reasons. Thus, the cause of the revision or modification would be incomplete or inaccurate information in the original application, and CA should bear any costs arising from its submission of incomplete or inaccurate information. Also, witness Kemp testifies that CA's proposed language would reduce CA's incentive to provide accurate and complete information on its original applications, which in turn would increase the likelihood of additional work and uncompensated expenses for AT&T Florida. Witness Kemp also testifies that reviewing applications, whether they be initial applications or resubmissions, always require a review by AT&T Florida to make sure the equipment is authorized for the collocation space, compatible with the CO equipment, and safe. Finally, witness Kemp argues that the fee charged is for the review of the application, not any underlying work on the physical facilities.

Analysis

Staff notes that anytime an application is submitted to AT&T Florida, whether it is an initial or an augment situation, it is reviewed in its entirety to see what changed and what needs to be changed to accommodate the revised application. (TR 553) Staff also notes that a revised application requires review as much as an initial application, therefore AT&T Florida is entitled to recover the costs associated with the review of the application and any subsequent modifications. (TR 554)

Staff expects AT&T Florida to charge an additional fee only if "substantive" changes are made. Witness Kemp makes this qualification in her testimony: "(w)hen a CLEC makes a substantive change to a collocation application, whether an initial application or an augment, the modified application must be reviewed." (TR 553)

Staff notes that Collocation § 7.4.1 provides three exceptions that are changes that would not result in a charge: 1) Customer name, 2) Contact information, and 3) Billing Contact Information. The section also states that any other "modification or revision is made to any information in the Application" it will be treated as a new application, and appropriate application/augment fees will be charged associated with the level of assessment performed by AT&T Florida. (TR 554) Based on this wording, staff believes that any change not specifically excluded can be construed as a "substantive" change. AT&T Florida does not ask for a revision to an application unless a review shows a change needs to be made for technical reasons. (TR 554) AT&T Florida witness Kemp states that the fee is associated with the level of assessment performed by AT&T Florida and absence of any financial incentive to get it right the first time will inevitably encourage lackadaisical behavior for CA and every CLEC that obtains this provision in its ICA. (TR 555)

AT&T Florida's costs and rates were determined in a previous generic docket (see Issue 66). While arguments over the costs and rates of application fees were contentious, the Commission ultimately found "(t)he appropriate rates for the application (initial and subsequent) and engineering fees are those proposed by the ILECs."[10]

Staff is concerned with AT&T Florida witness Kemp's argument that the fee is partially justified by helping to prevent "lackadaisical" behavior by the CLEC. The rates previously approved by the Commission were based on TELRIC and AT&T Florida's actual costs to provide the service. There is no accommodation for a punitive rate element in TELRIC-based rates.

Based on the testimony given and the previous Commission decision regarding this issue, staff believes AT&T Florida's proposed language on this issue is appropriate.

Conclusion

Staff recommends that AT&T Florida may charge CA an application fee when CA makes a substantive change to a collocation application.

[10] Order No. PSC-04-0895-FOF-TP, Issued September 14, 2004, in Docket No. 981834-TP, <u>In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.</u>

Issue 7B: When CA wishes to add or to modify its collocation space or the equipment in that space, or to cable to that space, should CA be required to submit an application and to pay the associated application fee? (Collocation § 7.5.1)

Recommendation: Yes. When CA wishes to add to or modify its collocation space, or the equipment in that space, or to cable to that space, it should be required to submit an application and to pay the associated fee. (Hawkins)

Position of the Parties

CA: Not for equipment replacement. AT&T's proposed language permits AT&T to charge CA an augment application fee in cases where CA does not order any service or change from AT&T but simply submits a revised equipment list to AT&T.

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

Staff Analysis: This issue is similar to Issue 7A, but deals with augments to an existing collocation arrangement rather than with modifications to an application for collocation.

Parties' Arguments

CA

Witness Ray argues that since collocation is intended to be TELRIC-based, a charge for a revised equipment list is inappropriate because AT&T Florida does not incur costs when CA installs its own equipment and simply complies with the agreement's requirement to provide notice to AT&T Florida of the change. While CA does not dispute that AT&T Florida has the right to review CA's equipment list, AT&T Florida has provided no citation to any authority which requires CA to pay for such a review.

AT&T Florida

Witness Kemp states that this issue is essentially the same as Issue 7A. The analysis and result should be the same as Issue 7A. (TR556)

Analysis

This issue is basically the same as Issue 7A but deals with augments to the collocation arrangement rather than modifications to the application for collocation. CA proposes to delete the word "equipment" from Collocation Section 7.5.1.

Staff notes that anytime an application is submitted to AT&T Florida, whether it is an initial or an augment situation, it is reviewed in its entirety to see what changed and what needs to be changed to accommodate the revised application. (TR 553) Staff also notes that a revised application requires review as much as an initial application, therefore AT&T Florida is entitled to recover the costs associated with the review of the application and any subsequent modifications. (TR 554)

Staff further notes that Collocation Section 7.4.1 provides three exceptions to the rule that are excluded from application fees. They are: 1) Customer name, 2) Contact information, and 3) Billing Contact Information. (TR 554) AT&T Florida does not ask for a revision to an application unless a review shows a change needs to be made for technical reasons. (TR 554) Staff believes that AT&T Florida’s language is appropriate.

Conclusion

Staff recommends that when CA wishes to add to or modify its collocation space, or the equipment in that space, or to cable to that space, it should be required to submit an application and to pay the associated fee.

Issue 8: Is 120 calendar days from the date of a request for an entrance facility, plus the ability to extend that time by an additional 30 days, adequate time for CA to place a cable in a manhole? (Collocation § 14.2)

Recommendation: Yes. One hundred twenty calendar days from the date of a request for an entrance facility, plus the ability to extend that time by an additional 30 days, is adequate time for CA to place a cable in a manhole. (Hawkins)

Position of the Parties

CA: No. CA believes that it is more reasonable to specify an initial period of 180 days for it to install its own fiber optics, and that an extension should be 90 days instead of 30 in case CA needs more time.

AT&T Florida: Yes. 120 calendar days, with a possible 30 calendar day extension, is adequate time for CA to place cable in a manhole. Other carriers have consistently met this deadline under their ICAs with AT&T. CA can invoke the force majeure provision in the ICA if extraordinary conditions hinder timely placement of CA's cable.

Staff Analysis: This issue discusses CA's request for 180 calendar days (6 months) with an additional 90 calendar day (3 month) extension to place cable in the manhole. (TR 31) AT&T Florida states that 120 calendar days plus a 30 extension is more than enough time to place cable in a manhole. (TR 557)

Parties' Arguments

CA

Witness Ray presents two reasons an initial period of 180 days with an extension of 90 days should be reasonable when it attempts to install its fiber optic cable: (1) a CLEC may encounter numerous hurdles and challenges, erected by AT&T Florida, and (2) weather delays or other elements, and both would unnecessarily increase CA's cost. (TR 31) Witness Ray further states that "AT&T Florida witness Kemp has not demonstrated that it is harmed by the longer installation window or extension, and AT&T Florida's language seems designed solely to increase CA's costs by forcing it to re-apply and double-pay for the entire arrangement when there are delays." (TR 31-32)

AT&T Florida

Witness Kemp argues that, "All other carriers with which AT&T Florida had to complete the same work have been consistently able to meet the 120 calendar days plus 30 day deadline." She further argues "CA has not presented any information that would suggest it needs more time than other carriers in Florida to place cable in a manhole, and has provided no cogent basis for its proposal that it be given 180 days plus an extension of 90 days." (TR 557)

Witness Kemp also asserts it takes 30 to 90 days for AT&T Florida to complete its portion of the work to meet CA at the manhole once the Bona Fide Firm Order has been processed. It is unreasonable to expect AT&T Florida's cable to be coiled and waiting for CA at the manhole for up to 270 days (nine months). Leaving the cable coiled and waiting for CA clutters the vault area near the manhole and makes it difficult to work in that area and it ties up space in the duct and would prevent AT&T Florida from accommodating a request for another CLEC who is willing to use the space within the 120 day plus 30 day deadline." (TR 557-558)

Analysis

This issue addresses CA's requested time frame of 180 calendar days with an additional 90 calendar day extension for CA to install its fiber optic network in a manhole. AT&T Florida argues that 120 calendar days with an additional 30 calendar day extension is ample. (TR 557) Staff believes the evidence of record supports AT&T Florida's position.

According to witness Ray, AT&T Florida has not demonstrated that it is harmed by the longer installation window and extension; CA alleges AT&T Florida's language proposes to increase CA's costs by forcing it to re-apply and double-pay for the entire arrangement when there are delays. (TR 31) However, staff notes that CA has not provided any substantial reason(s) or proof for its requested time frame and CA has control over its own activities, including the date on which it submits a collocation application, and can take into account whatever other projects it is working on.

Staff believes the evidence supports AT&T Florida's timeline because other carriers have been able to meet the 120 plus 30 day deadline without any problems and leaving the cable coiled and waiting for CA clutters the vault area near the manhole and may cause safety issues for surrounding CLEC's equipment. Staff believes AT&T Florida's proposed language for Collocation § 14.2 is appropriate.

Conclusion

Staff recommends that 120 days from the date of a request for an entrance facility, plus the ability to extend that time by an additional 30 days is adequate time for a CA to place a cable in a manhole.

Issue 9A: Should the ICA require CA to utilize an AT&T Florida AIS Tier 1 for CLEC-to-CLEC connection within a CO? (Collocation § 17.1.2)

Recommendation: Yes. The ICA should require CA to utilize an AT&T Florida AIS TIER 1 for CLEC-to-CLEC connection within a CO. (Hawkins)

Position of the Parties

CA: No. AT&T is required to perform CLEC-to-CLEC cross-connects or permit a collocator to perform them.

AT&T Florida: Yes. CLEC-to-CLEC connections must be performed by an AIS Tier 1 so that AT&T can properly maintain and organize its and other Collocators' facilities in AT&T's COs and to ensure the safety and integrity of those facilities and AT&T's network.

Staff Analysis: This issue involves whether CA should be required to use an Approved Installation Supplier for a CLEC-to-CLEC cross connect within a single CO. CA believes that AT&T Florida or the CLEC should be able to perform this task. AT&T Florida argues that, like all installations outside of the CLEC's collocation space, this function should be performed by a Tier 1 AIS.

Parties' Arguments

CA

Witness Ray states that CA would incur substantial costs if it were required to utilize an AT&T Florida AIS to install a cable to another collocator from CA's CO collocation. AT&T Florida has not demonstrated that it would be harmed by this provision, and CA believes that AT&T Florida's language is intended solely to artificially increase CA's costs and to delay CA's entry into the market. (TR32)

AT&T

Witness Kemp testifies that AT&T Florida reasonably requires all carriers to use an AIS Tier 1 for installation work done in a CO, including CLEC-to-CLEC connections. An AIS Tier 1 has the demonstrated qualifications and competence necessary to perform installation work efficiently and safely, which is essential when working on or around CLEC and AT&T Florida equipment. (TR559)

Analysis

This issue addresses whether the ICA should require CA to utilize an AT&T Florida AIS for CLEC-to-CLEC connection within a CO. CA's concern deals mainly with excessive costs imposed by AT&T Florida to perform a simple ten minute job/task. (TR 32) Witness Kemp argues that, for safety and security reasons, a Tier 1 AIS is required for all installation work in a CO. Staff believes requiring the use of an AIS to install facilities outside of CA's collocation space is appropriate.

This Commission has previously dealt with CLEC-to-CLEC cabling in its generic collocation docket:

> The record in this case does, however, demonstrate that in establishing cross-connects in **non-contiguous** collocation spaces, work must be done in common areas. Work done in these common areas appears to be of particular concern, because it could potentially affect not only the cross-connecting carriers, but the ILEC and all other ALECs collocated in the CO. Thus, this appears to be a legitimate safety concern. **As such, and consistent with our other decisions set forth herein, all work in common areas must be performed by the ILEC.** Because the ILEC will, ultimately, be required to perform some work regarding these types of requests, ALECs shall be required to submit an application to the ILEC for the ILEC to perform the work for ALEC cross-connects in non-contiguous collocation spaces.
>
> We also find that the record supports that when ALECs cross-connect with each other in **contiguous** collocation spaces, **no application fees are necessary**, because the ALECs can establish their own cabling, but the ALECs must inform the ILEC of the type of work to be performed and the duration of such work. **The ALECs must also use an ILEC-certified vendor to perform this work or submit an application to the ILEC to perform this task to ensure that the work is done safely**.[11]

(emphasis added)

Staff notes that AT&T Florida uses Tier 1 AIS vendors to do its own CO work as well, so all work within COs is done by Tier 1 AIS vendors. Staff believes that AT&T Florida's proposed language for this issue (Collocation § 17.1.2) is appropriate.

Conclusion

Staff recommends the ICA should require CA to utilize an AT&T Florida AIS TIER 1 for CLEC-to-CLEC connection within a CO.

[11] Order No. PSC-00-0941-FOF-TP, Issued May 11, 2000, in Docket No. 981834-TP, In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.

Issue 9B: Should CLEC-to-CLEC connection within a CO be required to utilize AT&T Florida common cable support structure? (Collocation § 17.1.5)

Recommendation: Yes. CLEC-to-CLEC connections within a CO should be required to utilize AT&T Florida common cable support structure. (Hawkins)

Position of the Parties

CA: No. CA should be permitted to run CLEC-to-CLEC cross-connects to other collocators without using AT&T's common cable support structure if it can safely do so because of the proximity of the parties to each other.

AT&T Florida: Yes. All CLEC-to-CLEC connections must use AT&T's common cable support structure regardless of the distance between the CLECs' collocated equipment. AT&T must ensure the safety and integrity of its network and the facilities of each Collocator, and has set specific common standards that apply equally to all Collocators.

Staff Analysis: This issue questions whether CLEC-to-CLEC connections within a CO are required to utilize AT&T Florida Common Cable Support structure. AT&T Florida Common Support structure is cable support equipment, such as overhead wire racks, used to safely and efficiently organize and manage all wiring in a CO. CA argues that it should be allowed to connect directly to another collocator without using the Common Cable Support Structure. AT&T Florida maintains that use of this structure is necessary and is required for all carriers, including AT&T Florida.

Parties' Arguments

CA

Witness Ray testifies that CA's language permits CA to directly connect to another Collocator to prevent such unnecessary costs only when the two Collocators are within ten feet of each other and when the connection can safely be made without use of AT&T Florida's common cable support structure. Witness Ray further states that AT&T Florida has not demonstrated that it would be harmed by this provision, and CA believes that AT&T Florida's language is intended solely to artificially increase CA's costs and to delay CA's entry into the market. (TR 32)

AT&T

Witness Kemp argues that "(i)n a CO that houses the equipment of multiple CLECs and AT&T Florida, it is imperative that the enormous amount of wire be organized in a safe and efficient manner." Common support structure is required for all carriers located in an AT&T Florida CO, including AT&T Florida. (TR 560-561)

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Analysis

This issue is similar to Issue 9A; this issue involves the use of common cabling structures for wiring within a CO. Staff believes common cabling structures should be used.

AT&T Florida witness Kemp testifies that use of a common cable support structure is necessary to maintain a safe, orderly site for AT&T Florida and collocators to work. Use of this structure is required for all carriers including AT&T Florida.

Staff agrees that all collocators should be required to utilize AT&T Florida's common support structure in CO locations to ensure the safety and efficiency of CLECs' and AT&T Florida's cable and equipment.

Conclusion

Staff believes that AT&T Florida's proposed language for this section be approved. Staff recommends that CLEC-to-CLEC connections within a CO should be required to utilize AT&T Florida common cable support structure.

Issue 10: If equipment is improperly collocated (e.g., not previously identified on an approved application for collocation or not on authorized equipment list), or is a safety hazard, should CA be able to delay removal until the dispute is resolved? (Collocation § 3.18.4)

Recommendation: Staff recommends if equipment is improperly collocated (e.g., not previously identified on an approved application for collocation or not on authorized equipment list), CA should be able to delay removal until the dispute resolution is resolved. However, if equipment is a safety hazard, CA should not be able to delay removal until the dispute resolution is resolved. (Hawkins, Long)

Position of the Parties

CA: Yes. AT&T should be required to use the ICA's Dispute Resolution process to resolve all disputes, instead of having unilateral self-help remedies, while denying CA any such remedies.

AT&T Florida: No. In the scenario that is the principal subject of this issue, AT&T contends that CA has collocated equipment that does not comply with safety standards; CA disagrees; and the parties are in dispute resolution. Prudence dictates that the equipment be removed until the dispute is resolved.

Staff Analysis:

This issue (Collocation § 3.18.4) addresses whether CA's installed collocation equipment can remain in place pending dispute resolution if AT&T Florida believes CA's equipment is not necessary or improperly collocated. AT&T lists the following three reasons why it may object to equipment in this section: 1) it is not necessary for interconnection; 2) it is a safety hazard; or 3) it is not previously identified on an approved application for collocation or not on AT&T Florida's All Equipment list (AEL). The parties agree that if AT&T Florida believes the equipment is not necessary, CA may leave its equipment in place pending dispute resolution. CA further believes that its equipment should remain in place during dispute resolution regardless of AT&T Florida's reason for objecting to the equipment. AT&T Florida argues that if it is not previously identified on an application, on an approved list, or is a safety hazard, it should be removed during the dispute. Finally, the parties disagree on the length of time to remove the equipment: AT&T Florida proposes 10 or 15 business days, depending on the reason, while CA proposes 15 business days in all 3 cases

Parties' Arguments

CA

Witness Ray states:

> . . .AT&T (Florida) seems to propose that CA's sole remedy for anything is the dispute resolution process in this agreement, but AT&T (Florida) seeks to embed other remedies for itself which do not require it to comply with the dispute resolution provisions. . . .so CA has instead inserted proposed language in the Draft ICA to require compliance with dispute resolution. CA also lengthened the cure time to 30 days to give CA ample time to replace equipment or notify customers that CA will not be able to provide service any longer.

(TR 33)

Witness Ray offered a compromise, reducing CA's cure time from 30 calendar days to 15 business days. (TR 84) CA further proposed in its brief the addition of the sentence "(t)he parties shall comply with 47 C.F.R. § 51.323(c) at all times" to "to further clarify that AT&T must obey this rule. . . ." (CA BR 46)

AT&T Florida

Witness Kemp testified that Collocation § 3.18.4 covers two scenarios in which the parties disagree about CA's compliance with the Collocation Attachment. In the first scenario, the parties disagree about whether equipment that CA has collocated is necessary for interconnection or access to UNEs (as it must be in order to be permissibly collocated). In the second scenario, the parties disagree about whether equipment that CA collocated complies with safety standards or was collocated without having been identified on an approved application for collocation or on the All Equipment List. (TR 562)

Witness Kemp states that in the first scenario, where AT&T Florida contends that CA has collocated equipment that is not necessary for interconnection or access to UNEs and CA disagrees, the parties have agreed that CA may leave its equipment in place while the disagreement is resolved. The reason AT&T Florida is willing to agree to this is that if CA is collocating equipment that is not necessary for interconnection or access to UNEs, CA is breaching the ICA, but is not endangering persons or property. (TR 562-563)

Witness Kemp maintained that in the second scenario, however, where CA has collocated equipment that AT&T Florida contends does not comply with safety standards, the safety of persons and property is at stake. Accordingly, CA should be required to remove the equipment until the dispute resolution process concludes. (TR 563)

Witness Kemp also stated that the second scenario also encompasses the situation in which AT&T believes CA has installed equipment that was not on CA's collocation application or that does not appear on the AEL. This situation should arise rarely, if ever, since there should be no debate about whether a particular piece of equipment was or was not on CA's collocation application or the AEL. In any event, much the same reasoning applies here as in the safety standard variation of the second scenario. (TR 563-564)

Witness Kemp testified that there is a second, lesser, disagreement concerning Collocation § 3.18.4, namely, how much time CA should have to remove its collocated equipment if (i) the equipment does not comply with the minimum safety standards or was not approved in advance, or (ii) the equipment is not used for interconnection or access to UNEs and CA does not dispute that fact. AT&T initially proposed ten business days, and CA proposed 30 calendar days. In its rebuttal testimony, CA proposed to split the difference at 15 business days. AT&T's principal concern is scenario (i), where safety is at stake. Accordingly, AT&T now advocates 15 business days for scenario (ii) (as CA proposed) and ten business days for scenario.(i) (AT&T Florida BR 28-29)

Analysis

This issue centers around disputes over the placement of collocation equipment. Staff believes that a dispute involving this section of the proposed agreement is highly unlikely. CA witness Ray testifies that “CA would be willing to agree that CA may not leave collocated equipment in a collocation if it is not NEBS-certified as required by the ICA and standard industry practice.” (TR 84) In its brief, AT&T Florida states “it is not clear why there would be a dispute in the first place if CA is using NEBS-certified equipment.” (AT&T Florida BR 30) This indicates that the use of NEBs-certified equipment would alleviate conflicts regarding collocation equipment. Further, Collocation § 3.81.1 states that collocated equipment, in a practical sense, must meet Telcordia Level 1 NEBS safety requirements.[12] Staff believes a combination of both parties’ language is appropriate.

AT&T Florida’s witness Kemp provides three reasons why AT&T Florida may object to CA’s collocation equipment: it is not necessary, it does not meet safety requirements, or it is not on a previous collocation application or on the AEL. (TR 562) CA’s proposed language only delineates two reasons: it is not necessary or it does not meet safety standards. (EXH 2, Collocation § 3.18.4)

The FCC’s collocation rule 47 C.F.R. § 51.323 addresses what collocation equipment is allowed to be installed by CLECs and how an ILEC may object to the equipment’s placement. The FCC’s rule also delineates only two reasons an ILEC may object to a CLEC’s equipment: the same two grounds as proposed in CA’s language.

The FCC’s rule and CA’s proposed language do not mention objecting to equipment because it is not on an approved collocation application or on AT&T Florida’s AEL. Staff believes this is appropriate. Staff believes that agreed-to provisions in the proposed agreement deal specifically with these other scenarios. Collocation § 3.17.1 addresses equipment not appearing on an approved application, and Collocation § 3.17.2 deals with equipment not on the AEL. Staff believes that these provisions adequately encompass equipment not on an application or the AEL and no additional language is required in Collocation § 3.18.4.

One item CA’s proposed language does not include is an exception for legitimate safety concerns. As discussed in Issue 4a and others, staff believes the dispute resolution process in the proposed agreement should be followed, unless there is a compelling reason to not do so. Staff believes legitimate safety concerns can be such a compelling reason. Staff believes an exception for safety concerns should be included in the proposed language.

In its brief, CA also proposed adding “(t)he parties shall comply with 47 C.F.R. § 51.323(c) at all times” to its proposed language. (CA BR 46) This indicates that CA desires all of the provisions of the FCC’s rule to be followed by both parties. Staff believes this is a reasonable request. However, if not qualified, the words “at all times” may be overly broad and restrict the parties from agreeing to separate terms. Staff believes that adding a phrase such as “unless otherwise agreed to by the parties” would alleviate this concern.

[12] Collocation § 3.18.1 also allows for equipment “having been installed in any ILEC structure. . .prior to January 1, 1998 with no known history of safety problems.”

The parties also disagree on the period of time to remove the equipment if AT&T Florida prevails in the dispute, or AT&T Florida's objection is not disputed. AT&T Florida originally proposed 10 business days after notice, while CA proposed 30 calendar days. (TR 564, TR 33) In his rebuttal testimony, witness Ray offers 15 business days as a compromise. (TR 84) In its brief, AT&T Florida amended its proposal to 15 business days if the equipment is not necessary, and 10 business days for the other two cases. (AT&T Florida BR 30)

The parties agree that if the objection to the equipment is that it is not necessary, 15 business days for removal is adequate. Staff believes that, because of legitimate safety concerns, AT&T Florida's proposal requiring removal in 10 business days is appropriate. Staff believes that equipment not on an application or the AEL is contemplated elsewhere in the proposed agreement, and no language in this provision is required.

Staff recommends the parties file language conforming to the decisions in this issue, including CA's language for when the objection is because the equipment is not necessary, an exception if the equipment violates safety standards, 15 business days cure time for "not necessary" objections and 10 business days cure time for safety objections, and the inclusion of CA's proposed "(t)he parties shall comply with 47 CFR § 51.323(c) at all times," modified to allow the parties to agree otherwise.

Conclusion

Staff recommends if equipment is improperly collocated (e.g., not previously identified on an approved application for collocation or not on authorized equipment list), CA should be able to delay removal until the dispute resolution is resolved. However, if equipment is a safety hazard, CA should not be able to delay removal until the dispute resolution is resolved.

Issue 11: Should the period of time in which the Billed Party must remit payment be thirty (30) days from the bill date or twenty (20) days from receipt of the bill? (GT&C § 2.45)

Recommendation: Staff recommends the Bill Due Date be defined as thirty (30) calendar days from the bill date. (Bates)

Position of the Parties

CA: In the event that AT&T does not timely send a bill to CA, the due date should be adjusted to provide time for CA to review, dispute and/or remit payment as appropriate. AT&T would still be able to seek dispute resolution remedies under the good faith requirements of this agreement if CA unreasonably claimed that it did not receive bills in order to avoid late payment charges.

AT&T Florida: The bill due date should be 30 calendar days from the date of the bill. Establishing the bill due date based on when a bill is received would require the billing party to obtain and verify proof of receipt, and would require AT&T to revamp its billing systems.

Staff Analysis: In Issue 11, the parties disagree on when payment for bills is due. CA believes it should be given 20 days from the date it receives the bill from AT&T Florida, and AT&T Florida believes payment is due 30 days from the date of the bill.

Parties' Arguments

CA

Witness Ray testifies AT&T Florida has a well-established history of failure to timely send complete bills to CLECs. Since AT&T Florida sometimes mails bills ten or more days after the date on the bill, witness Ray believes the bill due date should be tied to the date the bill is received rather than the date printed on the bill. Otherwise, CA is placed in a situation where no matter how late AT&T Florida is in sending the bill, CA would owe late payment charges.[13] (TR 34, 85; CA BR 47-48)

Witness Ray testifies there are three ICAs active in Florida between CLECs and BellSouth, which contain language similar to CA's language and would make the bill due date dependent upon the date received. Since at least three other CLECs in Florida already have CA's requested terms, Witness Ray testifies, AT&T Florida does not actually have to make costly changes to its billing systems in order to accommodate CA's request. (EXH 46, Bates No. 2095; CA BR 49)

Finally, since CA has cited three existing ICAs that contain its proposed language for this issue, it is now clear that AT&T Florida's proposed language would be discriminatory against CA by affording some CLECs the protection of CA's proposed language while denying that protection to CA. (EXH 46, Bates No. 1636; CA BR 52)

AT&T Florida

Witness Pellerin testifies the Bill Due Date should be 30 days after the date of the bill. Establishing the Bill Due Date based on when a bill is received would require AT&T Florida to obtain and verify proof of receipt in order to know when each bill was due. CA's proposal

[13] The application of Late Payment Charges is addressed in Issues 13A, 13B, 13C, 13D, and 23.

complicates the billing process unnecessarily, would impose system modification costs on AT&T Florida that CA has not offered to pay, and is likely to lead to disputes. (TR 175; EXH 36, Bates No. 559; AT&T Florida BR 31-32)

Witness Pellerin testifies that AT&T Florida is subject to a performance measure regarding the timeliness of its invoices to CLECs as compared to its retail customers. AT&T Florida would be subject to financial payments to CA if AT&T Florida were to fail to transmit its bills to CA in the same or less time than it transmits comparable retail bills. "CLECs that elect to receive their bills by snail mail must expect that there will sometimes be delays or lost bills, just as we all experience from time to time with our personal mail." (EXH 36, Bates No. 560; TR 176; AT&T Florida BR 32)

AT&T Florida testifies that in Docket No. 040130-TP, an ICA arbitration between a group of CLECs and BellSouth, a similar issue was raised. The issue in the case was whether the time period for review and payment of bills "should be based upon the date bills are issued (by BellSouth), or whether it should be based on the date bills are received." (EXH 36, Bates No. 559; AT&T Florida BR 33)

In response to staff inquiries, witness Pellerin testifies that like CA, the Joint Petitioners in Docket No. 040130-TP believed the bill due date should be based on the date bills are received, in part because BellSouth was supposedly untimely in posting or delivering bills. The Commission rejected the CLEC's position and ruled that the date for bill payment should be based on the date bills are issued, and not on the date they are received.[14] (EXH 36, Bates No. 559; AT&T Florida BR 33)

Analysis

In the proposed ICA, AT&T Florida defines the "Bill Due Date" to mean thirty (30) calendar days from the bill due date. CA proposes to append AT&T Florida's definition with "or 20 days following receipt of a bill by the billed party, whichever is later." (EXH 2, p. 13)

CA witness Ray testifies the starting point for the time to pay its bill should be twenty days after receipt of the bill because "CLECs often get bills from AT&T Florida long after the bill date printed on the bill." Even if CA processed, disputed, and paid the bill on the same day that it was, the payment could still be considered late under AT&T Florida's proposal language solely because of AT&T Florida's delay in mailing." (TR 85)

Witness Pellerin argues,"[t]hirty calendar days from the date of the bill is a readily identifiable date" and "[e]stablishing the Bill Due Date based on when a bill is received, in contrast, would require the billing party to obtain and verify proof of receipt in order to determine the Bill Due Date." AT&T Florida believes it "should not have to bear the additional cost to . . . document CA's receipt for the sole purpose of identifying the Bill Due Date." (TR 269; EXH 36, Bates No. 559)

[14] Order No. PSC-05-0975-FOF-TP

In his rebuttal testimony, witness Ray testifies that changing the "timeframe for when the clock starts for auditing and paying the bill" will not require "system modifications or impose costs" on AT&T Florida. Witness Ray noted that CA's "20 day proviso only kicks in if it takes more than ten days from the bill date for us to receive a bill." (TR 85-86)

Witness Pellerin testifies there are both cost differences and technical feasibility considerations which make CA's proposal inappropriate. In Staff Interrogatories to AT&T Florida, staff asked witness Pellerin if there was a cost or technical feasibility difference between remitting payment 30-days from the bill date or 20-days from receipt of the bill, and to explain the response in detail. Although AT&T Florida responded to staff's request for details, its response lacks enough detail to determine if there is a cost difference between the two proposals, or whether CA's proposal was technically feasible. (EXH 36, Bates No. 559)

Witness Pellerin testifies that in a previous proceeding, Docket No. 040130-TP, a similar issue was presented to the Commission. That issue asked if the period of time for review and payment of bills "should be based upon the date bills are issued (by BellSouth), or whether it should be based on the date bills are received." The Commission concluded in Order No. PSC-05-0975-FOF-TP, "We find BellSouth shall not be ordered to make substantive changes to its billing systems on behalf of the Join Petitioners, and at its own expense, in order to exceed 'parity' performance." (EXH 36, Bates No. 559)

Witness Ray cited three ICAs that contained language similar to its position: Docket No. 050419-TP,[15] between AT&T Florida and MCImetro Access, dated November 2, 2006, reached through arbitration; Docket No. 060720-TP,[16] between AT&T Florida and Supra, dated August 18, 2002, reached through negotiation; and Docket No. 000828-TP,[17] between AT&T Florida and Sprint, dated November 8, 2001, reached through arbitration. (EXH 33, Bates No. 436; EXH 46, Bates No. 1636)

None of the three agreements include language that matches CA's proposed language. In the AT&T Florida and MCI agreement, Attachment 7, Section 1.16 states in pertinent part the "payment due date shall ordinarily be thirty (30) days after the bill Date."[18] In the AT&T Florida and Sprint ICA, Section 1.10 says in pertinent part that the payment due date is the "same date in the following month as the bill date."[19] The AT&T Florida and Supra ICA, Attachment 7, Section 1.3 requires weekly payments.[20]

Witness Pellerin testifies that AT&T Florida is subject to a performance measure regarding the timeliness of its invoices to CLECs as compared to its retail customers. Further, AT&T Florida would be subject to financial payments to CA if AT&T Florida were to fail to transmit its bills to CA in the same or less time than it transmits comparable retail bills. (TR 176; EXH 3, p. 300)

[15] Effective date 11/5/2006, expiration date 11/4/2012, evergreen month to month until renegotiated.
[16] Effective date 10/14/2006, expiration date 8/31/2009. The ICA was adopted by Opextel LLC d/b/a Alodiga.
[17] Effective date 1/1/2001, expiration date 3/19/2010, evergreen month to month until renegotiated.
[18] Docket No. 050419-TP, Attachment 7, Section 1.16, Page 8.
[19] Docket No. 000828-TP, Attachment 7, Section 1.10, Page 4.
[20] Docket No. 060720-TP, Attachment 7, Section 1.3, Page 5.

Witness Ray argues the decision in Order No. PSC-05-0975-FOF-TP, "[t]hat BellSouth's current bill rendering practices are reasonable," is not on point because this decision was rendered at a time when the Commission had oversight authority over retail billing which it does not have today. Witness Ray testifies AT&T Florida's "parity argument" should no longer be a valid measurement or argument for incorrect billing practices. (CA BR 50)

The Commission has no authority over retail billing, but does require wholesale billing to be on parity with retail billing.

Staff believes decisions reached in earlier arbitrations regarding the Bill Due Date are appropriate and establishing a Bill Due Date based on when a bill is received could lead to confusion and require changes to the billing system. For these reasons, staff believes AT&T Florida's proposed language is more appropriate.

Conclusion

Staff recommends the Bill Due Date be defined as thirty (30) calendar days from the bill date.

Issue 13Ai: Should the definition of "Late Payment Charge" (LPC) limit the applicability of such charges to undisputed charges not paid on time? (GT&C § 2.106)

Recommendation: No. Staff recommends the definition of "Late Payment Charge" should not limit the applicability of the charges to undisputed charges not paid on time. (Bates)

Position of the Parties

CA: CA has modified AT&T's language to clarify that only undisputed charges shall accrue late payment charges if not timely paid and removed language that would subject CA to late payment charges if CA does not submit remittance information.

AT&T: No. Late payment charges (LPCs) should accrue on any unpaid billed amount–but if the bill is disputed, LPCs will actually be paid only if the Billing Party wins the dispute. Indeed, the ICA states elsewhere that LPCs will apply to disputed amounts.

Staff Analysis: At issue here is whether LPCs should be limited to only undisputed charges not paid on time, or whether they should also be assessed on disputed amounts. CA believes the dispute resolution process contains sufficient language addressing the application of late payment charges, but AT&T believes the addition of "undisputed" to the definition will create confusion.

Parties' Arguments

CA

Witness Ray testifies the dispute resolution process already provides for payment of retroactive late payment charges for any disputes resolved in AT&T Florida's favor. In addition, witness Ray testifies that CA "does not object . . . that Late Payment Charges accrue on all unpaid balances and then refunded for disputed amounts in CA's favor." (TR 36-37; CA BR 54)

AT&T Florida

Witness Pellerin testifies that a party that does not pay its bill on time because it disputes the bill should have to pay LPCs if its dispute is not well-founded. LPCs should apply to any charges not paid by the bill due date. This does not mean that CA will actually wind up paying LPCs on disputed amounts when the dispute is resolved in CA's favor. (TR 178; AT&T Florida BR 36)

Analysis

At issue here is whether the word "undisputed" should be added to the definition of Late Payment Charge and whether this addition limits the application of LPCs to only undisputed charges not paid on time. Staff believes AT&T Florida's language is appropriate and should be approved.

Witness Ray testifies that CA does not object to "AT&T Florida's proposal that Late Payment Charges accrue on all unpaid balances and then are refunded for disputed amounts resolved in CA's favor." (TR 37) Witness Pellerin testifies that a party that "disputes its bill should have to pay LPCs if its dispute is not well-founded." Both parties appear to agree that late payment charges apply to amounts in dispute when a dispute is resolved in favor of the non-disputing party.

Witness Pellerin testifies that LPCs “accrue while dispute resolution is in progress–but that does not mean LPCs are actually paid on all disputed amounts” and acknowledges AT&T Florida might not ultimately be owed a late payment charge. (TR 178, AT&T Florida BR 36)

Witness Pellerin also testifies that late payment charges have been addressed in two previous arbitrations–Docket Nos. 001797-TP and 020960-TP. In Docket No. 001797-TP, which was cited in 020960-TP, the Commission ruled “[w]here the dispute is resolved in favor of BellSouth, [the CLEC] shall be required to pay the amount it owes BellSouth plus applicable late payment charges." (EXH 36, Bates Nos. 564-565) Staff notes that these arbitrations were decided under somewhat different circumstances. In both of these dockets, the Commission ordered that all payments for disputed amounts could be withheld, and late payments and/or interest would be assessed after the dispute was resolved.

Both parties agree CA will owe late payment charges should a dispute be resolved in AT&T Florida’s favor. Staff agrees with AT&T Florida that late payment charges should accrue on all unpaid amounts during a dispute. Staff also agrees with AT&T Florida that late payment charges will not ultimately be owed if the dispute is resolved in CA’s favor. Staff also agrees that CA’s proposed inclusion of the word “undisputed” in this issue makes it unclear whether LPCs would ever be assessed on disputed amounts. For these reasons, staff believes AT&T Florida’s proposed language is more appropriate.

Conclusion

Staff recommends the definition of “Late Payment Charge” (LPC) should not limit the applicability of the charges to undisputed charges not paid on time.

Issue 13Aii: Should Late Payment Charges apply if CA does not provide the necessary remittance information? (GT&C § 2.106)

Recommendation: Yes. Staff recommends that late payment charges should apply if CA does not provide the necessary remittance information. (Bates)

Position of the Parties

CA: CA has modified AT&T's language to clarify that only undisputed charges shall accrue late payment charges if not timely paid and removed language that would subject CA to late payment charges if CA does not submit remittance information.

AT&T: Yes. Without the proper remittance information, AT&T cannot process CA's payment. Agreed General Terms and Conditions (GT&C) § 11.5 so states and also states–with CA's concurrence–that payment is not considered to have been made until the remittance information has been received.

Staff Analysis: At issue here is whether timely payments missing some remittance information should be assessed a Late Payment Charge because the billing party will not know how to apply payments. CA does not believe payments missing remittance data should be assessed late payment charges and AT&T Florida believes they should apply since it cannot process a payment missing the information.

Parties' Arguments

CA

Witness Ray testifies that late payment charges should not apply solely due to remittance information issues if payment was actually received by AT&T Florida on time. The company has no incentive to send payments without remittance information, but "sometimes remittance information is not properly transmitted when paying electronically." (TR 36; CA BR 54)

AT&T Florida

Witness Pellerin testifies the remittance information that a CLEC provides when it pays a bill tells AT&T Florida to which Billing Account Numbers (BAN) each payment should be applied, and thus allows the CLEC to manage its bill payments as it chooses. AT&T Florida states that unless CA gives AT&T Florida the remittance information the ICA requires CA to provide, AT&T Florida cannot possibly know how to allocate its payment. (TR 180; AT&T Florida BR 37)

AT&T Florida believes CA can remain in control of how its payments are applied by including the proper remittance information when it submits payment. AT&T Florida argues that until AT&T Florida receives the required remittance information, the bill remains unpaid. LPCs properly apply to payments not made by the bill due date, including those that are late because CA did not supply the remittance information. (TR 181; AT&T Florida BR 38)

Analysis

The ICA defines Remittance Information as "the information that must specify the BANs paid; invoices paid and the amount to be applied to each BAN and invoice." (EXH 2, pg. 20)

Witness Ray objects to paying late payment charges for payments that are missing remittance data because "sometimes remittance information is not properly transmitted when paying electronically." (TR 36) Witness Pellerin testifies that without the remittance information, AT&T Florida cannot process CA's payment. (TR 181)

Witness Pellerin testifies that when payments are received, they are processed and deposited based on the remittance information received with the payment. Payment cannot post when the CLEC provides insufficient remittance information. In that situation, the Finance-Treasury organization researches the matter and utilizes past remittance information and/or direct contact with the CLEC to determine how to post payment. Once payment is posted, Late Payment Charges, if any, stop accruing. (EXH 37, Bates No. 670)

Witness Pellerin testifies that if a payment is missing remittance data "a collections representative contacts the CLEC and requests the necessary remittance information . . . [T]he CLEC then typically supplies the remittance information to the collections representative, who passes it on to the remittance center for posting." (EXH 37, Bates No. 671) Witness Pellerin is unable to determine how often this happens because "AT&T Florida does not track the requested information." (EXH 38, Bates No. 704)

Staff believes all payments should include the necessary data for the payments to be correctly applied. The remittance information appears to be a minimal amount of information in relation to the information required to file a billing dispute.[21] For these reasons, staff believes AT&T Florida's proposed language is more appropriate.

Conclusion

Staff recommends late payment charges should apply if CA does not provide the necessary remittance information.

[21] Dispute information should include: the date of the bill in question; the account number or other identification (CLEC must provide the CBA/ESBA/ASBS or BAN number) of the bill in question; telephone number, circuit ID number or trunk number in question; any Universal Service Ordering Code (USOC) information relating to the item questioned; amount billed; amount in question; and the reason that the Disputing Party disputes the billed amount. (EXH 2, pg. 40)

Issue 13B: Should the definition of "Past Due" be limited to undisputed charges that are not paid on time? (GT&C § 2.137)

Recommendation: No. Staff recommends the definition of "Past Due" should not be limited to undisputed charges that are not paid on time. (Bates)

Position of the Parties

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

AT&T Florida: No. Any payment not made on time is properly treated as "Past Due." If a bill is disputed, the accrued late payment and interest charges are credited to the billed party if the dispute is resolved in its favor.

Staff Analysis: The issue at question here is whether the definition of Past Due should be limited to undisputed charges that are not paid on time. This definition also determines how payments are treated for the purposes of levying late payment charges. CA believes the definition should be clarified to apply only to undisputed charges and AT&T Florida believes any charge not paid by the due date is Past Due.

Parties' Arguments

CA

Witness Ray testifies that CA does not object, as a practical matter, to AT&T Florida's proposal that Late Payment Charges accrue on all unpaid balances and then are refunded for disputed amounts resolved in CA's favor. CA seeks to ensure that it is clear to all parties that it is entitled to withhold payment of properly disputed charges without being in default, and that CA shall not be obligated to pay Late Payment Charges for disputed amounts resolved in CA's favor whether or not they are initially charged and then credited later. CA agrees to pay Late Payment Charges on disputed amounts if and only if a dispute is ultimately resolved against CA. (TR 37; CA BR 55)

Witness Ray testifies that AT&T Florida's proposed language should clarify that only undisputed charges shall accrue late payment charges if not timely paid, and notes that the dispute resolution process already provides for payment of retroactive late payment charges for any disputes resolved in AT&T Florida's favor. (CA BR 55)

AT&T Florida

As witness Pellerin testifies in Issue 13Ai, billed amounts that are not paid by the Bill Due Date should be subject to LPCs. The agreed portion of the definition states in part: "'Past Due' means when a CLEC fails to remit payment for any charges by the Bill Due Date . . . ." CA proposes to insert "*undisputed*" before "charges," so that charges would not be "Past Due" if they were disputed. AT&T Florida opposes that proposal. (AT&T Florida BR 39)

Once a dispute is resolved, late payment and interest charges will be paid to the billing party or credited to the billed party depending on resolution of the dispute. CA's language would improperly allow CA to pay late at will and to avoid late payment and interest charges by disputing the bill. (AT&T Florida BR 39)

Analysis

Staff believes that this issue is similar to Issue 13Ai which deals with the definition of Late Payment Charge. Staff believes, for similar reasons, AT&T Florida's proposed language should be approved.

In his direct testimony, witness Ray testifies "that only undisputed charges [should be] considered unpaid charges if not timely paid" and that, "CA does not object, as a practical matter, to AT&T Florida's proposal that Late Payment Charges accrue on all unpaid balances and then are refunded for disputed amounts resolved in CA's favor." (TR 36-37)

In his rebuttal testimony, witness Ray testifies that CA's goal is to "provide clarity that if charges are disputed, that they cannot be considered past due for the specific purposes of assessing late payment charges or considering CA to be in default of its agreement." (TR 135)

Staff believes if late payment charges should accrue on past due amounts, the definition of Past Due should align with the definition of Late Payment Charge. Staff also believes that CA's proposed inclusion of the word "undisputed" will make it unclear if disputed charges are ever considered past due. For these reasons, staff believes AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends the definition of "Past Due" should not be limited to undisputed charges that are not paid on time.

Issue 13C: Should the definition of "Unpaid Charges" be limited to undisputed charges that are not paid on time? (GT&C § 2.164)

Recommendation: No. Staff recommends the definition of Unpaid Charges should not be limited to undisputed charges that are not paid on time. (Bates)

Position of the Parties

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

AT&T Florida: No. An "Unpaid Charge," as that term is used in the ICA, is any charge not paid on time. CA's inclusion of "undisputed" in the definition is inconsistent with the way the term is used in agrees provisions in the ICA.

Staff Analysis: This issue asks whether the definition of unpaid charges should be limited to those charges that have not been disputed. CA believes inclusion of "undisputed" in the definition clarifies it may withhold properly disputed amounts, and AT&T Florida believes the definition properly defines any amount not paid by the bill due date.

Parties' Arguments

CA

Witness Ray testifies that CA modified AT&T Florida's proposed language to clarify that only undisputed charges shall accrue late payment charges if not timely paid, and notes that the dispute resolution process already provides for payment of retroactive late payment charges for any disputes resolved in AT&T Florida's favor. (TR 36; CA BR 55)

Witness Ray does not object, as a practical matter, to AT&T Florida's proposal that Late Payment Charges accrue on all unpaid balances and then are refunded for disputed amounts resolved in CA's favor. CA simply seeks to ensure that it is clear to all parties that it is entitled to withhold payment of properly disputed charges without being in default, and that CA shall not be obligated to pay Late Payment Charges for disputed amounts resolved in CA's favor whether or not they are initially charged and then credited later. CA agrees to pay Late Payment Charges on disputed amounts if and only if a dispute is ultimately resolved against CA. (TR 37)

AT&T Florida

Witness Pellerin testifies the "term 'Unpaid Charges' is used in three provisions in the ICA and in light of the way the term is used in those provisions, it would make no sense to include the word "undisputed" in the definition." Witness Pellerin further argues that GT&C Sections 11.9, 12.4, and 12.6 uses the term "Unpaid Charges" and assume that Unpaid Charges may or may not be disputed. Witness Pellerin believes the provisions would be rendered nonsensical if Unpaid Charges were defined in such a way as to exclude disputed charges. (TR 185; AT&T Florida BR 40)

The disputed definition of "Unpaid Charges" reads as follows:

> "Unpaid Charges" means any **undisputed** charges billed to the Non-Paying Party that the Non-Paying Party did not render full payment to the Billing Party by the Bill Due Date, including where funds were not accessible. (TR 184; AT&T Florida BR 40) (Italicized and bolded language proposed by CA.)

Witness Pellerin believes the important point is that if AT&T Florida wins the escrow issue, so that its proposed Section 12.6.2 is included in the ICA, it is explicit and obvious that the charges that are the subject of Section 12.6.2–the charges to be deposited in escrow–are disputed charges. Thus, the whole provision would be rendered nonsensical if "Unpaid Charges" were limited to undisputed charges. (TR 185-186; AT&T Florida BR 42)

Analysis

As previously noted, witness Ray testifies that "CA doesn't object to AT&T Florida's proposal that Late Payment Charges accrue on all unpaid balances and then are refunded for disputed amounts resolved in CA's favor." (TR 37)

Witness Pellerin testifies "'Unpaid Charges' is used in three provisions in the ICA" and "it would make no sense, in light of the way the term is used in those provisions, to include the word 'undisputed' in the definition." (TR 184)

Staff believes if late payment charges should accrue on past due amounts, the definitions of Past Due and Unpaid Charges should align with the definition of Late Payment Charge. Staff also believes that CA's proposed inclusion of the word "undisputed" will conflict with these other definitions and make it unclear if disputed charges are ever considered unpaid. For these reasons, staff believes AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends the definition of "Unpaid Charges" should not be limited to undisputed charges that are not paid on time.

Issue 13D: Should Late Payment Charges apply only to undisputed charges? (GT&C § 11.3.1)

Recommendation: No. Staff recommends late payment charges should apply to all charges not paid on time. (Bates)

Position of the Parties

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

AT&T Florida: No. Late payment and interest charges should accrue on all unpaid amounts, including disputed amounts. Once a dispute is resolved, late payment and interest charges will be released to the Billing Party or credited to the Billed Party depending on resolution of the dispute.

Staff Analysis: This issue asks whether late payment charges should only apply to undisputed charges. Staff believes AT&T Florida's proposed language is appropriate and should be approved.

Parties' Arguments

CA

Witness Ray testifies CA modified AT&T Florida's proposed language to clarify that only undisputed charges shall accrue late payment charges if not timely paid, and notes that the dispute resolution process already provides for payment of retroactive late payment charges for any disputes resolved in AT&T Florida's favor. (TR 36; CA BR 55)

As a practical matter, CA doesn't object to AT&T Florida's proposal that Late Payment Charges accrue on all unpaid balances and then are refunded for disputed amounts resolved in CA's favor. CA simply seeks to ensure that it is clear to all parties that it is entitled to withhold payment of properly disputed charges without being in default, and that CA shall not be obligated to pay Late Payment Charges for disputed amounts resolved in CA's favor whether or not they are initially charged and then credited later. CA agrees to pay Late Payment Charges on disputed amounts if and only if a dispute is ultimately resolved against CA. (TR 37)

AT&T Florida

As witness Pellerin testifies in connection with Issue 13Ai, late payment and interest charges should apply to all unpaid amounts and should accrue on any amount not paid on time, including charges subject to a dispute. Once the dispute is resolved, late payment and interest charges will be paid to the Billing Party depending on resolution of the dispute. (TR 186-187; AT&T Florida BR 42)

With the revisions CA has proposed to the billing and payment language in GT&C Section 11, it does not appear that CA would ever pay late payment charges on any amounts it disputed–even when the dispute is resolved against CA. (TR 187; AT&T Florida BR 42-43)

Analysis

As previously noted, witness Ray testifies that "CA doesn't object to AT&T Florida's proposal that Late Payment Charges accrue on all unpaid balances and then are refunded for disputed amounts resolved in CA's favor." (TR 37)

Witness Pellerin testifies that, "late fees properly accrue on any amount not paid on time, including charges subject to a dispute." (TR 186-187)

Since both parties agree that late payment charges should accrue on unpaid balances, staff believes late payment charges should apply to all charges not paid on time. Furthermore, staff's recommendation for issues 13Ai, 13B, and 13C do not limit the definition of Late Payment Charge, Past Due, and Unpaid Charges to only undisputed charges. Staff believes these are interrelated and language should be consistent. Therefore, staff recommends late payment charges should apply to all charges not paid on time. For these reasons, staff believes AT&T Florida's proposed language is more appropriate.

Conclusion

Staff recommends late payment charges should apply to all charges not paid on time.

Issue 14A: Should the GT&Cs state that the parties shall provide each other local interconnection services or components at no charge? (GT&C § 5.1)

Recommendation: No. Staff recommends that the GT&Cs should not state that the Parties shall provide each other local interconnection services or components at no charge. (Deas)

Position of the Parties

CA: Yes. The parties should each bear their own costs for Local Interconnection.

AT&T Florida: No. AT&T is not obligated to provide any and all services and components related to interconnection at no charge. For example, AT&T is obligated to make entrance facilities available to CLECs at TELRIC-based prices (not for free) when those facilities are used solely for local interconnection.

Staff Analysis: This issue asks the Commission to determine if language concerning each party bearing its cost on its side of the Point of Interconnection should be included in the GT&C section.

Parties' Arguments

CA

CA's proposed language states:

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

(EXH 2, p. 25)

Although CA agrees that some of its proposed language is included in other sections of the ICA, witness Ray asserts that including CA's recommended language in the GT&C will provide clarity and minimize future confusion and disputes. (TR 89) Witness Ray also acknowledges that under this agreement, CA intends to pay for collocation within AT&T Florida's CO as well as order local interconnection trunks from AT&T Florida to connect the parties' networks. (EXH 33, Bates No. 440) However, CA believes it should not be charged for any additional local interconnection services or components.

Witness Ray suggests CA's recommended language would provide clarity to the following:

- CA's designated collocation within AT&T Florida's CO is the POI and not another specific location within that building. (TR 38)

- There should be no charge for local interconnection circuits which connect the CLEC to its collocation to meet AT&T Florida. (TR 38)

- Certain elements listed in the pricing attachment (such as Entrance Facilities) may not be charged to CA for anything on AT&T Florida's side of the POI. (TR 37-38)

- Each party will bear its cost on its side of the POI. (TR 37)

- CA should not be charged for local interconnection services at the POI which would include but not be limited to facilities such as cross-connect cabling, connecting facility assignments, switch trunk ports, mux ports or DACS port. (EXH 33, p. 440)

AT&T Florida

AT&T Florida's objections to the inclusion of CA's proposed language in the GT&Cs are that a portion of the language is already appropriately within the ICA and the remaining portion is unclear and confusing. (TR 187-188)

AT&T Florida agrees with CA's proposed language addressing the issue of each party being responsible for its cost of interconnection facilities on its side of the POI. However, AT&T Florida believes that this portion of CA's proposed language has already been appropriately included in Sections 2.26 and 3.2.2 of the network interconnection section of the ICA. Network Interconnection Section 2.26 states that the POI "serves as a demarcation point between the facilities that each Party is physically and financially responsible to provide." Network Interconnection Section 3.2.2 states, "[u]nless otherwise provided in this Attachment, each Party is financially responsible for the provisioning of facilities on its side of the negotiated POI(s)." AT&T Florida asserts that including this same point, but with different language, in the GT&C section could cause a future need for interpretation. (TR 188)

The latter portion of CA's proposed language states "neither party shall charge the other party non-recurring or monthly recurring charges associated with local interconnection services or components located at the POI or on the billing party's side of the POI." According to AT&T Florida witness Pellerin, AT&T Florida is unclear as to what is meant by "Local Interconnection Services or Components." Witness Pellerin further states that it appears CA's proposed intent is to make sure there are no charges to install interconnection trunks, to revise a due date, or for multiplexing. AT&T Florida argues that if this is CA's proposed language intent, this position is being disputed and addressed within other issues of this arbitration. (TR 188)

Analysis

This issue addresses whether specific language concerning each party bearing its cost on its side of the POI, and not charging each other for local interconnection services and components, should be included in the GT&C section of the ICA. Both parties agree that the GT&C section generally includes language that is applicable to more than one aspect of the ICA. (EXH 46, p. 1550, EXH 47, p. 1751)

Both parties also agree that each party is financially responsible for all facilities on its side of the POI. (AT&T Florida BR 43, TR 271, TR 37) Staff is in agreement with AT&T Florida that similar language is already appropriately included in the Network Interconnection Section of the ICA. In regards to the latter portion of CA's proposed language, AT&T Florida witness Pellerin suggests AT&T Florida is unclear about what is meant by the language "Local Interconnection

Services and Components" and may not be in agreement with this clause. (TR 188) Although, AT&T Florida is unclear concerning the intent of CA's language, AT&T Florida suggests it is possibly already being addressed in other issues (e.g. Issue 14Bii and Issue 66), and would more appropriately be addressed in other sections of the ICA. (AT&T Florida BR 44, TR 188)

CA asserts that its proposed language seeks to clarify that "local interconnection" benefits both parties and therefore each party should bear its own costs for local interconnection orders. CA contends that it incurs costs for local interconnection ordering, attending joint planning meetings, designing circuits which will connect its network to AT&T Florida's network, physically connecting its network to AT&T Florida's network, and then ensuring the work is completed and the services are functioning correctly on the due date. CA further contends AT&T Florida incurs similar costs to process the orders and therefore it would be parity if each party bears its own costs on its side of the POI. (CA BR 57)

In addition, CA disagrees with AT&T Florida's position that CA's collocation cannot be designated as the POI. (TR 108) CA believes including its proposed language in the GT&C section will clarify this issue and ensure AT&T Florida does not improperly charge for local interconnection facilities.

This issue is related to Issue 38. In Issue 38, staff recommends that CA should be able to determine the POI and set it at its collocation space. If the Commission approves staff's recommendation in Issue 38, this issue will become essentially moot because there will be no need for CA to add protective language against charges for interconnection outside its collocation space.

Staff is persuaded by AT&T Florida's argument that sufficient clarifying language regarding the financial responsibilities of the parties is contained in the Network Interconnection Section and does not need to be duplicated in the GT&C as CA is attempting to do. Based on staff's analysis, staff believes that AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that the GT&Cs should not state that the Parties shall provide each other local interconnection services or components at no charge.

Issue 14Bi: Should an ASR supplement be required to extend the due date when the review and discussion of a trunk servicing order extends beyond 2 business days? (Net. Int. § 4.6.4)

Recommendation: Yes. Staff recommends that an ASR supplement should be required to extend the due date when the review and discussion of a trunk servicing order extends beyond 2 business days. (Deas)

Position of the Parties

CA: No. AT&T routinely fails to complete Local Interconnection Orders for weeks or months past the agreed due date, while the CLEC tries in futility to get AT&T to properly complete the orders. CA should not be unfairly penalized for delays while AT&T is not penalized for its own delays.

AT&T Florida: Yes. Section 4.6 addresses trunk servicing, i.e., adjusting the sizing of trunk groups based on utilization. If a trunk servicing order is in held status more than two days while the parties discuss the order, an ASR supplement is necessary to establish a new due date.

Staff Analysis: This issue deals with whether a supplemental ASR should be required when the parties' discussion concerning the appropriateness of the ASR extends beyond two business days. CA suggests it should not be required to submit a supplemental ASR when due dates are not met due to an AT&T Florida delay. AT&T Florida argues it is necessary for a supplemental ASR to be submitted in certain situations in order to change the due date. (TR 189-190, TR 38-39)

Parties' Arguments

CA

Network Interconnection Section 4.6 addresses trunk servicing which includes adjusting the sizing of working trunk groups based on over-or-under utilization. (EXH 2, pp. 80-81) Trunks are communication lines between two switching systems which enable each system's customers to communicate. If CA determines that it needs additional or larger trunks due to the over utilization of its current trunks, CA is required to submit a trunk servicing ASR to AT&T Florida for the trunk group to be resized. Once AT&T Florida receives the request, a completion date is assigned. If discussion is necessary concerning the appropriateness of the ASR that CA submitted, the parties would then collaborate to review and discuss the ASR. If the review and discussion process extends beyond two business days from the date that the ASR was received, CA would be required to submit a supplemental ASR to AT&T Florida to change the original due date for completing the initial ASR. (TR 189-190)

CA believes that submitting a supplemental ASR when the review and discussion of a trunk servicing order extends beyond two business days should be optional. Further, CA argues that it should not be required to submit a supplemental ASR when the review and discussion of a trunk servicing order extends beyond two business days due to a delay caused by AT&T Florida. Therefore, CA recommends that the parties include CA's proposed ICA language in Network Interconnection Section 4.6.4 which states:

> Extension of this review and discussion process beyond two (2) Business Days from ASR receipt "**may**" require the ordering Party to supplement the order with proportionally adjusted Customer Desired Due Dates.

(emphasis added)

CA argues that AT&T Florida routinely fails to meet agreed upon due dates and cited several instances. (TR 38) For example, CA referenced a scenario of a CLEC submitting a trunk order for local interconnection trunks to AT&T Florida. AT&T Florida provided a due date for completion; however, when the due date arrived, the order was not completed, or AT&T Florida incorrectly built the cross-connect, or circuit was broken, etc. (EXH 33, pp. 441-445) Under these circumstances, CA asserts that it should not have to bear the cost of resubmitting an ASR because the delay was caused by AT&T Florida.

CA acknowledges that sufficient facilities must be in place to carry the ordered trunks before a trunk order can be completed. However, CA argues that when a CLEC orders interconnection trunks, each side must provision its facilities to the point of interconnection (POI) for those trunks as part of the process. Therefore delays due to shortage of facilities are not valid. Also, since the POI is in AT&T Florida's central office, CA suggests that AT&T Florida only has to install a cross-connect which takes ten minutes to install. CA further argues that since facilities are part of the trunk order, AT&T Florida should know how long it will take to complete a trunk order prior to issuing a due date. (EXH 33, p. 446) CA argues that knowing this information should minimize the need for changes in due dates even after the parties have jointly discussed and reviewed the ASR.

AT&T Florida

AT&T Florida witness Pellerin explains that when AT&T Florida receives an ASR, it is screened to assess whether it is in line with the current utilization and/or consistent with the parties' trunk forecast. If AT&T Florida determines that discussion is needed, then the order is placed on hold status while the parties discuss the appropriateness of the order. During these discussions, the parties discuss issues such as the need for proper sizing of trunk groups to not only ensure against excessive blocking of calls, but to also make sure they avoid unnecessary investments in facilities and allocation of equipment. (TR 189-190)

For example, suppose CA's trunk forecast reflects a requirement for 36 trunks in a particular trunk group, and the trunk group currently has 48 trunks. This trunk group appears to be properly sized. However, CA sends an ASR to AT&T Florida to increase the size of the trunk group from 48 trunks to 192 trunks. Since this request far exceeds the forecasted trunk requirement, AT&T Florida would likely place the order in hold status and contact CA to initiate a joint planning discussion regarding that ASR. This gives CA the opportunity to demonstrate the need for significantly more trunks than it forecasted and protects AT&T Florida from investing in facilities and switching equipment that will not be used. (EXH 36, p. 567)

Witness Pellerin suggests that under these circumstances, it is in the best interest of both parties to expedite this process; however, in some cases a resolution may take longer than the agreed upon two business days. Further, AT&T Florida has performance measures to meet concerning the timeliness of the completion of local interconnection trunk orders. Therefore, it is unreasonable to hold AT&T Florida to the original due date when an order has been placed on hold pending a joint discussion about the particulars of the order. (EXH 36, p. 567) In such cases, if the parties agree that the ASR should be processed and it will take longer than the original due date to complete, AT&T Florida asserts that a supplemental ASR must be submitted in order to reset the due date. Therefore, AT&T Florida argues that its proposed ICA language for Network Interconnection Section 4.6.4 is appropriate. AT&T Florida's proposed language for Network Interconnection Section 4.6.4. states:

> Extension of this review and discussion process beyond two (2) Business Days from ASR receipt **will** require the ordering Party to supplement the order with proportionally adjusted Customer Desired Due Dates.

(emphasis added)

Analysis

AT&T Florida's proposed ICA language in Network Interconnection Section 4.6.4 of the ICA provides:

> Extension of this review and discussion process beyond two (2) Business Days from ASR receipt **will** require the ordering Party to supplement the order with proportionally adjusted Customer Desired Due Dates.

(emphasis added)

However, CA's proposed verbiage for Network Interconnection Section 4.6.4 suggests using the word "may" instead of "will." CA proposes the word "may" because it believes that under certain circumstances a supplemental ASR should not be required to change the due date, particularly if the extension of the discussion and review process was extended due to a delay cause by AT&T Florida. (TR 38)

Staff believes the reason for joint planning and discussion of trunk servicing orders is to gather additional information to determine the appropriateness of the request (i.e.: under or over utilization of trunks). (TR 189) Further, staff agrees that the duration of the joint discussion is driven by the complexity of the order to the extent the parties' usage and forecasting data differ. (AT&T Florida BR 46) Once it has been determined that the ASR is appropriate and necessary but it has exceeded the two business days allotted for discussion, then a new due date must be established. Thus, staff believes CA's examples concerning AT&T Florida not completing orders in a timely manner does not address the issue being discussed in Network Interconnection 4.6.4.

Staff is persuaded that AT&T Florida's recommended language which uses the word "will" is more appropriate than using the word "may." Based on staff's analysis, staff believes that AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends an ASR supplement should be required to extend the due date when the review and discussion of a trunk servicing order extends beyond 2 business days.

Issue 14Bii: Should AT&T Florida be obligated to process CA's ASRs at no charge? (Network Interconnection § 4.6.4)

Recommendation: No, staff recommends AT&T Florida should not be obligated to process CA's ASRs at no charge. (Deas)

Position of the Parties

CA: Although this Agreement places the ordering burden upon CA, Local Interconnection trunks are for the benefit of both parties. CA should bear its own costs to submit a Local Interconnection order, and AT&T should bear its own costs to process that order.

AT&T Florida: No. As the cost-causer, CA is responsible for the costs AT&T incurs to process CA's trunk orders. Furthermore, CA's language is inconsistent with agrees language in the ICA that requires CA to pay all ASR charges.

Staff Analysis: This issue asks the Commission to determine if AT&T Florida should be obligated to process CA's ASRs at no charge. The ASRs being disputed in this issue concern interconnection trunking: specifically, trunk servicing for local only, local interconnection, third party and meet point trunk groups. CA agrees with being charged for all ASRs except local interconnection ASRs. AT&T Florida disagrees with the notion that it should provide any ASRs at no charge since CA is the "cost causer" and should bear some of the expense to process its ASRs. AT&T Florida further argues that CA agrees to pay for service orders pursuant to Pricing Schedule Section 1.7.4, which does not exempt service orders for interconnection trunks. (TR 90-91, TR 273)

Parties' Arguments

CA

CA suggests the provision "each party bears its cost on its side of the POI" includes the processing of local interconnection trunk orders. (TR 38) According to CA witness Ray, local interconnection trunks benefit both parties equally, permitting their respective subscribers to pass traffic to each other, since these trunks are mutually beneficial to both parties, they are to be revenue-neutral between the parties. As a result, CA has proposed to include language in Network Interconnection Section 4.6.4 of the ICA which states:

> Neither party shall charge the other for ASRs related to ordering, rearranging or disconnecting Local Interconnection trunks, including charges for due date changes and ordering intervals.

CA acknowledges that it bears the burden of ordering local interconnection trunks. Logically, CA would know best what type and quantity of trunks would be needed to meet its business needs. (TR 90, 91) However, CA explains it would bear its cost of the ordering responsibility and AT&T Florida should bear its cost of processing the orders submitted by CA.

CA is not asserting that it should not be charged for any ASRs. CA is in agreement with being charged TELRIC-based rates for non-local interconnection orders such as cross connects between CA and AT&T Florida, UNE circuits and Special Access circuits, to connect with another collocator, transit trunks to connect CA to other CLECs and IXCs (Interexchange Carrier), extended enhanced Links, and Feature Group D trunks used for long distance. (EXH 28, Bates No. 71)

AT&T Florida implies CA agrees to pay for all trunk orders in Section 1.7.4 of the pricing schedule. However, CA argues the purpose of its proposed language is to provide clarity concerning what is considered local interconnection. CA contends that Section 1.7.4 of the pricing schedule gives a general provision for the ordering of trunks and does not distinguish between local interconnection orders and non-local interconnection orders. (TR 91) Further, CA argues that AT&T Florida refuses to negotiate anything on the pricing schedule when CA raised its issues and therefore the language is not really "agreed upon language." (TR 90-91)

AT&T Florida

AT&T Florida opposes CA's proposed language that would prohibit them from charging for ASRs related to ordering, rearranging, or disconnecting local interconnection trunks. (TR 190) Witness Pellerin explains that CA seeks to directly interconnect with AT&T Florida. As a result, it controls the ordering of the trunks based on its business needs, especially as it relates to the rearrangements of trunks. One example is when CA shifts traffic from one trunk group to another. Such rearrangements would require one or more trunk groups to be augmented, while others are reduced. (TR 273) There is a cost incurred by AT&T Florida to process CA's ASR orders, and witness Pellerin suggests that since CA is the "cost causer," it should bear the responsibility for all costs applicable to non-recurring charges. (TR 190)

CA suggests the processing of interconnection trunks should fall under the provision of "each party provisioning its facilities on its side of the POI." AT&T Florida agrees with this provision and acknowledges that it is well established and accepted practice that when two parties interconnect under Section 251(c)(2) of the Act, each carrier is responsible for the facilities on its side of the POI. (EXH 36, p. 568) However, AT&T Florida does not agree that this provision is applicable to this issue.

Witness Pellerin further explains that CA's proposed language contradicts the pricing schedule in Section 1.7.4 which states, "CLEC shall pay the applicable service order processing/administration charge for each service order submitted by CLEC to AT&T-21STATE to process a request for installation, disconnection, rearrangement, change, or record order." (TR 190) This language does not exclude local interconnection orders.

Analysis

Network Interconnection Section 4.0 of the ICA addresses interconnection trunking. (EXH 2, p. 74) Network Interconnection Section 4.6 is a subset of Interconnection trunking which deals with managing the capacity of Local only, Local interconnection, third party and meet point trunk groups. (EXH 2, p. 80) More specifically, AT&T Florida witness Pellerin notes that Network Interconnection Section 4.6 addresses trunk servicing issues as it relates to adjusting the sizing of trunk groups based on over-or-under utilization. (TR 189)

Issue 14Bii addresses whether AT&T Florida should process ASR's submitted by CA at no charge. CA argues it is in agreement with paying for its ASRs with the exception of Local interconnection ASRs. To clarify its position CA asserts that Local interconnection ASRs should fall under the provision of "each party bearing its cost on its side of the POI."

Both parties agree it is well established and accepted practice that when two carriers interconnect under Section 251(c)(2) of the Act, each carrier is responsible for the facilities on its side of the POI. Also, AT&T Florida witness Pellerin clarified in Issue 14A that AT&T Florida is in agreement with each party being responsible for the cost of interconnection facilities on its side of the POI, and this language has been included in Network Interconnection Section 2.26 and 3.2.2 of the ICA. (AT&T Florida BR 43, TR 188, TR 108) Although, AT&T Florida is in agreement with this provision, AT&T Florida believes it is not applicable to the ordering of Local interconnection trunks. Staff is in agreement with AT&T Florida that this provision is not applicable to the ordering of Local interconnection trunks.

AT&T Florida witness Pellerin argues that CA is the "cost causer," and should be responsible for the full amount of all applicable non recurring charges related to the ordering of ASRs for trunk servicing. CA argues it is not the "cost causer" because both parties benefit from trunk servicing. Staff agrees with AT&T Florida that it is CA who is seeking to directly interconnect with AT&T Florida and ultimately control the trunk orders submitted. (TR 273) Based on staff's analysis, staff believes that AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends AT&T Florida should not be obligated to process CA's ASRs at no charge.

Issue 15ii: May CA exclude explosion, collapse and underground damage coverage from its Commercial General Liability policy if it will not engage in such work? (GT&C § 6.2.2.14)

Recommendation: No. Staff recommends that CA may not exclude explosion, collapse, and underground damage coverage from the Commercial General Liability policy if it will not engage in such work. (Bates)

Position of the Parties

CA: Yes. AT&T Florida's proposed language would require CA to obtain costly insurance for collocations, conduits and pole attachments even if CA has not ordered or used those elements. This artificially increases CA's costs. CA's language provides the same protections but only if CA is utilizing the elements to be insured.

AT&T Florida: No. The insurance requirement from which CA seeks an exemption only applies if CA collocates, and if CA collocates, CA will definitely engage in the work in question.

Staff Analysis: This issue relates to the specific insurance coverages CA must obtain if it collocates in AT&T Florida facilities. CA does not believe it should carry insurance for activities it will not be engaging in, and AT&T believes if CA performs any work related to collocation, CA should carry appropriate insurance coverage.

Parties' Arguments

CA

Witness Ray testifies that CA would not be entitled to work in AT&T Florida manholes, on AT&T Florida poles, or in AT&T Florida COs until CA has submitted and AT&T Florida has processed a Conduit, Pole Attachment, or Collocation application. He also testifies that it is impossible to access AT&T Florida structures or to perform any other attachments to AT&T Florida property without AT&T Florida's acceptance of the CLEC's application for such work [because] the application process requires full insurance information to be provided upon submittal. (TR 39, 91; CA BR 65-66)

Witness Ray testifies that AT&T Florida verifies CLEC insurance as part of this application process. AT&T Florida's proposed language for this item would serve solely to increase CA's costs by requiring the insurance prior to the submission of any applications by CA to do any work. CA may not be able to obtain insurance for hazardous activities that it is not engaged in and for which it does not have expertise. (TR 39; CA BR 65-66)

AT&T Florida

Witness Pellerin testifies this issue concerns General Terms and Conditions Section 6.2.2.14, which is one of a series of provisions that concern insurance that CA must obtain only if it collocates on AT&T Florida's premises. If CA is not collocating, it would not need to obtain the insurance. (TR 274; AT&T Florida BR 49)

Witness Pellerin testifies that if CA collocates–and the provision only applies if CA collocates–then CA will necessarily do such work. CA does not and cannot dispute that the ICA requires it to enter AT&T Florida's underground structure if it collocates, or that by doing so, CA will be engaging in the "Work" that is the subject of Section 6.2.2.14. (TR 192; AT&T Florida BR 49)

Witness Pellerin testifies that "[i]f CA excludes these hazards from its insurance policy, AT&T Florida will not be adequately protected from loss." (TR 275)

Analysis

This issue involves whether CA will be required to obtain explosion, collapse and underground damage coverage. Staff believes that AT&T Florida's proposed language limits the application of this insurance to collocation, so CA will not need to obtain insurance unless it collocates.

Witness Ray testifies that "AT&T Florida's proposed language would require CA to obtain costly insurance for collocations, conduits and pole attachments even if CA has not ordered or used those elements" and "[t]his artificially increases CA's costs." Further, "[i]t is impossible to proceed with accessing AT&T Florida structures or to perform any other attachments to AT&T Florida property without AT&T Florida's acceptance of the CLEC's application for such work. The application process requires full insurance information to be provided upon submittal." (TR 39, 91)

Witness Pellerin noted in her testimony, "[t]he ICA provides CA with the ability to engage in such work." Collocation and structure access require an application, and as part of the application process, insurance information is exchanged. Witness Pellerin testifies, "[s]ince the hazards identified in GT&C Section 6.2.2.14 only apply in the collocation scenario, CA would not need to obtain such coverage as a non-collocator." (TR 274)

Although the collocation element is included in the ICA, CA is not required to collocate just by virtue of its inclusion in the ICA. The GT&C Section 6.2.2, Commercial General Liability insurance, has two insurance level requirements that will apply depending on if a CLEC will be a collocator or not. Based on the testimony of witness Ray, it appears CA will not be a "collocator" until the company orders services and files an application for access to AT&T Florida's facilities.

Witness Ray testifies in Exhibit 27 that "CA intends to interconnect its facilities-based network to AT&T Florida, [but]…intends to lease transport between it and AT&T Florida from FPL Fibernet." (EXH 27, Bates No. 39)

Staff is persuaded by AT&T Florida that this insurance will only be required if CA decides to collocate. Based on this interpretation, staff believes AT&T Florida's proposed language be approved. Based on CA's testimony and AT&T Florida's proposed language, it appears CA will not be required to purchase additional insurance coverage as a non-collocator. Once CA files its application for access to AT&T Florida facilities and structures, it will be a "collocator" and will be required to do so. Staff believes AT&T Florida's language should be approved.

Conclusion

Staff recommends that CA may not exclude explosion, collapse, and underground damage coverage from the Commercial General Liability policy if it will not engage in such work.

Issue 16: Which party's insurance requirements are appropriate for the ICA when CA is collocating? (GT&C § 6.2.2.6 through § 6.2.2.10)

Recommendation: Staff recommends that AT&T Florida's proposed insurance requirements are appropriate for the ICA, when CA is collocating. (Deas)

Position of the Parties

CA: CA believes that its proposed general liability limits are adequate to insure all actual risks caused by CA's activities when collocating.

AT&T Florida: AT&T's proposed insurance limits when CA is collocated in AT&T's CO provide reasonable protection for AT&T, while CA's proposed coverage is inadequate. The 1996 Act requires AT&T to allow CA's equipment and personnel onto AT&T's premises, but CA, rather than AT&T, should bear the risk created by CA's presence.

Staff Analysis: This issue deals with which proposed insurance limits are appropriate in a collocation situation.

Parties' Arguments

CA

CA believes its proposed Commercial General Liability limits are adequate when collocating with AT&T Florida. CA provides several reasons as to why its proposed limits are reasonable to cover AT&T Florida's risk.

First, CA witness Ray explains its proposed insurance limits were based upon Verizon's insurance limit requirements for several of its ICA's approved by the Commission. CA suggests Verizon's insurance requirements are consistent with standard industry practice. Therefore, CA argues its proposed insurance limits are more consistent with industry standard than those proposed by AT&T Florida.

Secondly, CA explains within AT&T Florida's CO, CLEC's collocations are segregated from AT&T Florida's equipment, and therefore the risk of physical damage to AT&T Florida's property is minimized.

Thirdly, CA suggests fire damage is minimized due to AT&T Florida's ICA's requirement that all CLEC collocation equipment be Network Equipment-Building System (NEBS) certified. This certification ensures equipment is able to self-contain in the instance of a fire. (TR 40, TR 92)

Finally, AT&T Florida states its proposed insurance limits are consistent with AT&T Florida negotiated ICA's within the last several years; however, witness Ray argues none of them were arbitrated. Witness Ray further expounds that although these agreements may contain collocation provisions, the CLEC's are not collocating with AT&T Florida and therefore there is no reason for dispute. In addition, CA contends it's not aware of any CLEC in Florida which is collocating under a standard AT&T Florida ICA as those approved over the past several years. (TR 92)

AT&T Florida

GT&C Section 6.2.2 provides that CA will maintain Commercial General Liability insurance covering "liability arising from premises, operations, personal injury, products/completed operations, and fire insurance. The amount of coverage required depends on whether CA is collocating on AT&T Florida's premises or not. AT&T Florida witness Pellerin acknowledges the parties agree to CA's required insurance limits when in non-collocating situations, however, the disagreement concerns insurance limit requirements when collocating. The proposed insurance limits for both parties are as follows. (TR 192-193)

Comparison of Proposed Insurance Coverage

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

Witness Pellerin explains the purpose of insurance coverage is to protect business owners from claims of liability for bodily injury, property damage, and personal and advertising injury that may occur on their premises or just as a result of basic business operations. (TR 193) Further, witness Pellerin explains AT&T Florida is obligated to permit CA to come onto its premises, and CA's very presence puts AT&T Florida at risk of damages. Witness Pellerin asserts the potential risk to AT&T Florida's facilities, equipment and personnel is much greater when a CLEC is collocating. (TR 194,195) For example:

> When a company-CA in this instance-collocates its expensive, high tech electronic equipment in an AT&T Florida premises or a data center, it is coming onto a premises that contains the same types of expensive, high tech equipment of multiple other companies that are also collocating, as well as AT&T Florida's equipment. In addition, the collocating company's employees have access to the premises for maintenance of equipment, etc. Any negligent act on a CA employee's part or any malfunction of CA's collocated equipment can cause serious and very expensive damage to AT&T Florida's and other collocators' equipment and to the building itself. Therefore, it is simply common sense to require higher insurance limits in the collocation scenario than in a traditional business transaction. The risk potential is much greater.

(EXH 36, p. 38)

In addition, AT&T Florida argues insurance limits should be commensurate with the magnitude of the potential loss. Prudent coverage amounts will be determined by the replacement value of what is being insured, not the likelihood of something happening to it. Witness Pellerin asserts that AT&T Florida's investment into a CO may exceed $50 million. Therefore, insurance rates must be higher just to partially cover the potential damage. (AT&T Florida BR p. 59)

Further, Witness Pellerin argues that AT&T Florida's proposed insurance limits have been the standard practice for AT&T Florida for the past several years. Therefore, AT&T Florida suggests its proposed limits are consistent with industry practice. (TR 194)

CA suggests its proposed insurance limits are adequate based on Verizon's ICA limits. AT&T Florida argues it is not, and should not be bound to accept the insurance limits based on another company's potential loss. (TR 40, TR 276)

Finally, AT&T Florida acknowledges the Act requires it to allow CLECs to collocate. However, collocators create great risk to AT&T Florida and it believes the collocator should bear the burden of the risk and not AT&T Florida. (AT&T Florida BR 50)

Analysis

This issue asks the Commission to determine which party's proposed insurance limits are appropriate when CA is collocating. Both parties agree CA should maintain Commercial General Liability insurance coverage. The parties also agree concerning the amount of coverage appropriate when CA is not collocated within AT&T Florida's CO. (TR 192) However, the disagreement is regarding the appropriate amount of coverage when CA is collocating within AT&T Florida's CO.

AT&T Florida witness Pellerin states the purpose of Commercial General Liability insurance is to protect business owners against claims of liability for bodily injury, property damage, personal and advertising injuries (slander and false advertising). Witness Pellerin further explains that when both parties enter into a contractual agreement, it is necessary to carry adequate liability insurance to insulate themselves, as well as the other party, against the financial consequences of insurable events if and when they occur. (TR193-194)

CA asserts that its proposed insurance limits are adequate to cover AT&T Florida's potential loss. However, staff agrees with AT&T Florida that insurance coverage limits should be commensurate with the magnitude of the potential loss. (AT&T Florida BR 51) AT&T Florida witness Pellerin argues that some of AT&T Florida's COs contain tens of millions of dollars worth of equipment and CA's proposed limits are simply inadequate to cover the potential loss. (EXH 38, p. 708, TR 194)

In addition, CA contends AT&T Florida segregates CLEC collocations from AT&T Florida's own equipment in its COs and therefore, the risk to AT&T Florida is much lower since CA will not have physical access to AT&T Florida's equipment within the CO. (TR 40) However, staff agrees with AT&T Florida that CA's mere presence of high tech equipment and personnel presents all kinds of potentially high risk.

CA also suggests AT&T Florida's requirement that all collocation equipment be NEBS certified minimizes the risk of fire damage and the need for higher insurance limits. AT&T Florida contends that not all equipment used by CLEC's is NEBS certified. AT&T Florida has an approved equipment list which includes equipment that is not NEBS certified and any CLEC can request that equipment be added to the list for them to be allowed to collocate it. (TR 327)

CA suggests AT&T Florida's proposed limits are not consistent with industry standard. However, upon analysis, staff notes AT&T Florida's approved ICAs over the past several years have included the same insurance limits as what AT&T Florida is recommending in this ICA, and appears to be AT&T Florida's standard practice in collocation situations.

Staff notes that in AT&T Florida's CO, there exists high tech electronic equipment as well as other collocator's equipment which in situations of negligence, accident or fire could potentially cost millions of dollars to recover. Based on staff's analysis, staff believes that AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that AT&T Florida's proposed insurance requirements are appropriate for the ICA, when CA is collocating.

Issue 17ii: Should AT&T Florida be obligated to recognize an assignment or transfer of the ICA that the ICA does not permit? (GT&C § 7.1.1)

Recommendation: No. Staff recommends that AT&T Florida should not be obligated to recognize an assignment or transfer of the ICA that the ICA does not permit. (Bates)

Position of the Parties

CA: Resolved.

AT&T Florida: No. The language to which CA inexplicably objects merely provides that if CA makes an assignment or transfer that is impermissible, the assignment or transfer is void as to AT&T. That is perfectly reasonable.

Staff Analysis: This issue addresses whether AT&T Florida is obligated to recognize the transfer of the ICA that is not permitted by the terms of the ICA. This issue deals with proposed language in GT&C Section 7.1.1 that delineates that AT&T Florida not be obligated to recognize an assignment or transfer of the ICA that the ICA does not permit.

General Terms and Conditions, Section 7.1.1 states:

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

> **Act that covers the same state(s) as this Agreement. Any attempted assignment or transfer that is not permitted is void *ab initio*.**

(EXH 2, pp. 28-29)

Parties' Arguments

CA

CA reported in its post-hearing brief that this issue had been resolved.

Witness Ray testifies that he does not believe that AT&T Florida should be permitted broad discretion to obstruct the lawful sale of a CLEC's business operations to any party. (EXH 31, Bates No. 213)

This provision would substantially devalue CA's assets both by the value of having conducted this arbitration to obtain a reasonable ICA and also by potentially making services provided under this ICA unavailable or unaffordable to a purchaser with a different ICA. (EXH 33, Bates No. 449)

The most likely purchaser of a CLEC would be another CLEC who may wish to keep CA's agreement. In the case of a sale of CA or CA's assets to another CLEC, CA is open to alternative language to specify that the resulting merged CLEC is only entitled to a single ICA and would have to choose which one to keep if it already had one. We do not believe that AT&T Florida has the right to demand that in such a case, the sale of CA's assets can be prohibited solely because both parties have Interconnection Agreements with AT&T Florida. (EXH 33, Bates Nos. 449-450)

AT&T Florida

Witness Pellerin testifies if CA initiated an assignment without attempting to obtain AT&T Florida's consent, such an assignment would not be permitted. The language in dispute refers to an assignment or transfer that is not permitted by the first sentence of Section 7.1.1. (TR 197; AT&T Florida BR 54)

Witness Pellerin testifies the sentence CA objects to does not empower AT&T Florida to prevent anything; it merely says that if CA violates the first sentence by making an impermissible assignment or transfer, the assignment or transfer is void as to AT&T Florida and need not be recognized by AT&T Florida. (EXH 47, Bates Nos. 1763-1764; AT&T Florida BR 55)

Analysis

Staff agrees with AT&T Florida's position regarding the assignment or transfer of an ICA, but believes the proposed language is superfluous.

Witness Ray testifies that CA's "objection to the proposed language is the implication that 'is not permitted' may be construed to mean that AT&T Florida may arbitrarily deny permission." (EXH 33, Bates No. 448)

Witness Pellerin testifies that "[i]n that proposed sentence, an 'attempted assignment or transfer that is not permitted' means an attempted assignment or transfer that is prohibited by the first sentence, i.e., one for which CA did not seek AT&T Florida's consent or for which AT&T

Florida reasonably withheld consent. Thus, the prohibition in this instance is one on which the parties have agreed; it is not a prohibition imposed by statute or rule." (EXH 36, Bates No. 574)

Staff believes GT&C Section 7.7.1 makes clear the ICA may not be transferred without consent without the addition of AT&T Florida's added language. Staff believes the additional language is superfluous and may be stricken because the section already makes clear that an unauthorized transfer is not acceptable. Witness Pellerin believes the first sentence is sufficient and the language is unnecessary. (EXH 47, Bates No. 1763)

The sentence at the beginning of Section 7.1.1 appears to adequately limit CA's ability to transfer its ICA to another party, thus making the addition in the middle of the section appear redundant. Removing the additional language does not appear to affect AT&T Florida's ability to refuse the assignment of the ICA to a CA affiliate. Staff believes that CA's proposed exclusion of the additional language in this issue be approved.

Conclusion

Staff recommends AT&T Florida should not be obligated to recognize an assignment or transfer of the ICA that the ICA does not permit.

Issue 17iii: Should the ICA disallow assignment or transfer of the ICA to an Affiliate that has its own ICA in Florida? (GT&C § 7.1.1)

Recommendation: Yes. Staff recommends the ICA should disallow the assignment or transfer of the ICA to an Affiliate that has its own ICA in Florida. (Bates)

Position of the Parties

CA: No. The language proposed by AT&T would serve to prevent CA's purchase by, or purchase of, another CLEC by attempting to deny the party the ability to obtain CA's interconnection agreement if the other party already has one.

AT&T Florida: Yes. CA and its potential assignee are each bound by the terms of its own ICA. CA and the assignee should not be permitted to ICA shop, selecting the terms and conditions they prefer between two different ICAs and bypassing the terms of their existing ICAs.

Staff Analysis: This issue addresses whether a CLEC can transfer the ICA to an affiliate with an existing ICA, and can that affiliate then shift to the newly acquired ICA if it contains terms and conditions preferred by the carrier. CA believes an affiliate should be permitted to choose the ICA that benefits its customers, while AT&T Florida believes affiliates with existing ICAs should not be able to switch ICAs during the term of the agreement.

Parties' Arguments

CA

Witness Ray testifies that he does not believe AT&T Florida should be permitted broad discretion to obstruct the lawful sale of a CLEC's business operations to any party. This would substantially devalue CA's assets both by the value of having conducted this arbitration to obtain a reasonable ICA and also by potentially making services provided under this ICA unavailable or unaffordable to a purchaser with a different ICA. (EXH 31, Bates No. 213; EXH 33, Bates No. 449; CA BR 71)

Witness Ray testifies the most likely purchaser of a CLEC would be another CLEC who may wish to keep that CLEC's agreement. CA doesn't believe AT&T Florida should have the right to prohibit the sale of CA's assets solely because both parties have ICAs with AT&T Florida. CA contends that AT&T Florida's language would give AT&T Florida an "unreasonable ability to prevent the sale or acquisition of CA or its assets." (EXH 33, Bates Nos. 449-450)

AT&T Florida

Witness Pellerin testifies the sentence to which CA objects does not empower AT&T Florida to prevent anything. The proposed language in GT&C Section 7.1.1, which is opposed by CA, states:

> Notwithstanding the foregoing, CLEC may not assign or transfer this Agreement, or any rights or obligations hereunder, to an Affiliate if that Affiliate is a Party to a separate interconnection agreement with AT&T Florida-21STATE under Sections 251 and 252 of the Act that covers the same state(s) as this Agreement. Any attempted assignment or transfer that is not permitted is void ab initio.

(EXH 2, p. 29)

Witness Pellerin testifies this language merely says that if CA violates the first sentence of the section by making an impermissible assignment or transfer, the assignment or transfer is void as to AT&T Florida and need not be recognized by AT&T Florida. (AT&T Florida BR 55)

The first sentence of the GT&C, Section 7.1.1 states:

> CLEC may not assign, delegate, or otherwise transfer its rights or obligations under this Agreement, voluntarily or involuntarily, directly or indirectly, whether by merger, consolidation, dissolution, operation of law, Change in Control or any other manner, without the prior written consent of AT&T Florida-21STATE**,** which shall not be unreasonably withheld.

(EXH 2, p. 28)

AT&T Florida states the language merely reflects the proposition that a CLEC with an ICA cannot abandon that ICA in favor of another during the term of its ICA. (TR 198; AT&T Florida BR 57)

Analysis

This issue addresses whether a CLEC can transfer its ICA to an affiliate with an existing ICA, and can that affiliate then shift to the newly acquired ICA if it contains terms and conditions preferred by the carrier. Staff agrees with AT&T Florida's position regarding the assignment or transfer of the agreement, but believes the added language is redundant.

Witness Ray testifies that CA's "objection to the proposed language is the implication that 'is not permitted' may be construed to mean that AT&T Florida may arbitrarily deny permission." (EXH 33, Bates No. 448)

Witness Pellerin testifies that "[i]n that proposed sentence, an 'attempted assignment or transfer that is not permitted' means an attempted assignment or transfer that is prohibited by the first sentence, i.e., one for which CA did not seek AT&T Florida's consent or for which AT&T Florida reasonably withheld consent. Thus, the prohibition in this instance is one on which the parties have agreed; it is not a prohibition imposed by statute or rule." (EXH 36, Bates No. 574)

Staff believes this Section makes clear the ICA may not be transferred without consent without the addition of AT&T Florida's language. Staff believes the additional language is unneeded and may be stricken because the section already makes clear that an unauthorized transfer is not acceptable.

Staff believes the first sentence of Section 7.1.1 quoted above adequately limits CA's ability to transfer its ICA to another party, thus making the addition at the end of the section superfluous. Removing the additional language does not appear to affect AT&T Florida's ability to refuse the assignment of the ICA to a CA affiliate. Staff recommends that CA's proposed exclusion of the additional language be approved.

Conclusion

Staff recommends the ICA should disallow the assignment or transfer of the ICA to an Affiliate that has its own ICA in Florida.

Issue 18: Should the ICA expire on a date certain that is two years plus 90 days from the date the ICA is sent to CA for execution, or should the term of the ICA be five years from the effective date? (GT&C § 8.2.1)

Recommendation: Staff recommends the term of the ICA should be five years from the effective date, and the effective date should be no later than ten (10) days after either (i) approval of this Agreement by the Commission or, absent such Commission approval, (ii) this Agreement is deemed approved under Section 252(e)(4) of the Act. (Bates)

Position of the Parties

CA: Yes. CA is a small company with limited resources, has expended tremendous resources to arbitrate several dozen issues that AT&T initially refused to discuss. CA believes that AT&T has not shown any evidence as to why a shorter term is more appropriate.

AT&T Florida: The ICA should expire on a date certain that is three years plus 90 days from the date the ICA is sent to CA for execution. Using a date certain avoids any possible confusion regarding exactly when the ICA expires, and three years is an appropriate duration in today's rapidly changing industry.

Staff Analysis: The issue at hand is two-fold: should the ICA be effective (and expire) on a date certain, and should the term of the ICA be for three years plus 90 days, or should the term be five years. CA believes changes in the telecommunications industry that necessitate changes to the ICA can be accomplished with an amendment and is less costly, while AT&T Florida believes the rapid change in the industry requires a shorter term to protect its interests.

Parties' Arguments

CA

Witness Ray wants a five year term starting on a date certain, and testifies that "AT&T Florida has not shown any reason why it would be unable to invoke Change of Law for this agreement, but instead has demanded a [three] year term which would artificially and needlessly increase CA's costs. (TR 41) Witness Ray believes a longer term would also "[relieve] its unnecessary burden to renegotiate [sooner]" than AT&T Florida's proposal allows. (TR 42; CA BR 74)

Witness Ray testifies that he did "not believe that the industry is changing any more rapidly now than it has over the past two decades." Further, "AT&T Florida has suggested, but has offered no evidence, that the pace of change is different now" or what harm it would suffer if CA is granted a five year term like other CLECs that came before it. (TR 93; CA BR 73)

AT&T Florida

Witness Pellerin testifies there are two aspects to this issue. The first is whether the ICA should expire on a specified date. The second is the length of the term. (TR 199) AT&T Florida proposes the ICA expire three years plus 90 days after AT&T Florida sends the ICA to CA for execution. (TR 277) CA proposes that the ICA expire five years after the effective date, which is ten days after the Commission approves the ICA. (EXH 41, Bates No. 1415; AT&T Florida BR 57)

Witness Pellerin testifies the ICA should expire on a date certain in order to eliminate any possible confusion regarding exactly when the ICA expires. (TR 199) AT&T Florida argues that a three-year term, as opposed to the five years that CA proposes – will enable the parties to accommodate the rapidly changing telecommunications industry if non-legal modifications to the ICA are necessary. The five-year term that CA proposes is too long in today's rapidly evolving telecommunications industry. (TR 202; AT&T Florida BR 58)

Under the language in GT&C Section 8.4.4, the parties will continue to do business under the ICA after the ICA expires until a successor agreement becomes effective between the Parties. (EXH 2, p. 30; AT&T Florida BR 60)

Analysis

There are two elements to this issue–the expiration date of the ICA (and by extension, the effective date) and the ICA term length.

Witness Pellerin testifies that initially, AT&T Florida offered CA an ICA term of two years plus 90 days because "[a] term that is slightly more than two years enables the parties to accommodate the rapidly changing telecommunications industry should modifications to the ICA that are not directly tied to a change in law be appropriate." (TR 200) Witness Pellerin later testifies that AT&T Florida had "modified its position to offer CA a three-year term" plus 90 days from their original two-year plus 90 days term. (TR 277)

Witness Pellerin explains that "[e]stablishing a date certain for contract expiration eliminates any possible confusion regarding exactly when the ICA expires, which is important in administering the ICA, not only for CA, but also for CLECs interested in adopting CA's ICA pursuant to Section 252(i) of the Act. It is very simple to look at the ICA and see a specific expiration date . . . which provides clarity." (TR 199)

Witness Pellerin testifies, "the parties have agrees in GT&C Section 8.1[22], [the effective date] is ten days after the ICA is approved." (EXH 2, p. 29) Staff notes this sets the effective date of the ICA up to 40 days after the executed ICA is filed with the Commission.

Staff believes the language setting the effective and expiration dates is confusing: AT&T Florida sets the term and expiration date based on when the ICA is executed, and the effective date is based on when the executed ICA is filed with the Commission. The term of the ICA should be set to begin on the effective date of the ICA.

[22] The Effective Date of this Agreement shall be no later than ten (10) days after either (i) approval of this Agreement by the Commission or, absent such Commission approval, (ii) this Agreement is deemed approved under Section 252(e)(4) of the 1996 Act. (EXH 2, p. 29)

The second element of this issue is the ICA term length. Witness Ray testifies that he "did make clear that CA wanted 5 years and that is what we were going to ask for in the arbitration." (TR 93) AT&T Florida modified its initial proposal to three years plus 90 days.

Witness Ray testifies that he did "not believe that the industry is changing any more rapidly now than it has over the past two decades" and that "AT&T Florida has suggested but has offered no evidence that the pace of change is different now." (TR 93) Witness Ray also cites an economic reason for a term of five years versus a term of three years plus 90 days. If the parties require an amendment during the term of the ICA, "negotiating an amendment would be less costly than negotiating a new ICA from scratch." He added that his counsel "estimated the cost [of] negotiating and fully prosecuting this arbitrated agreement at $150,000" but an amendment would cost "less than $5,000.00." (EXH 27, Bates No. 375)

Witness Pellerin acknowledges, "if the Commission adopts AT&T Florida's proposal … the parties will nonetheless continue to operate under the ICA for years after that." (TR 201) The implication of this acknowledgement is there will be little to no harm to AT&T Florida whether the term is three-years plus 90 days as it proposes, or five years as CA proposes. At the same time, CA has shown it may suffer financial harm if it is required to arbitrate a new ICA after three years. Both parties bear a cost when renegotiating an ICA, but the greater relative burden appears to fall on a CLEC.

In AT&T Florida's brief, witness Pellerin testifies, "AT&T Florida proposes that the ICA expire three years plus 90 days after AT&T Florida sends the ICA to CA for signature." (AT&T Florida BR 57) In this scenario, the ICA will be effective on the date it is executed, prior to it ever being reviewed by the Commission. This proposal is contrary to the clear language of the ICA which says the "Effective Date of this Agreement shall be no later than ten (10) days after either (i) approval of this Agreement by the Commission or, absent such Commission approval, (ii) this Agreement is deemed approved under Section 252(e)(4) of the Act. (EXH 2, p. 29)

Staff believes that CA's testimony is more compelling on this issue. Arbitrations are very expensive and time consuming. AT&T Florida's witnesses did not provide evidence that the current market conditions are more volatile than they have been over the past 20 years. Also, staff believes the change of law provisions will provide AT&T Florida with adequate protection from any significant changes in policy.

Staff is persuaded by CA's arguments and recommends the term of the ICA should be five years from the effective date, and the effective date should be no later than ten (10) days after either (i) approval of this Agreement by the Commission or, absent such Commission approval, (ii) this Agreement is deemed approved under Section 252(e)(4) of the Act.

Conclusion

Staff recommends the term of the ICA should be five years from the effective date, and the effective date should be no later than ten (10) days after either (i) approval of this Agreement by the Commission or, absent such Commission approval, (ii) this Agreement is deemed approved under Section 252(e)(4) of the Act. (EXH 2, p. 29)

Issue 19: Should termination due to failure to correct a material breach be prohibited if the Dispute Resolution process has been invoked but not concluded? (GT&C § 8.3.1)

Recommendation: No. Staff recommends that termination to cure a material breach is not prohibited at any time. (Bates, Tan, Ames)

Position of the Parties

CA: Yes. AT&T's proposed language would allow a simple allegation of breach, and without any proof or due process or evidence, to result in termination of all service to CA and its customers. This would force CA out of business.

AT&T Florida: No. Consistent with Florida contract law, AT&T should be able to terminate the ICA if CA is guilty of a material breach without awaiting adjudication of the matter and the exhaustion of all appeals, as CA proposes.

Staff Analysis: This issue addresses whether AT&T Florida can terminate CA's service due to a failure to correct a material breach while the Dispute Resolution process has been invoked but not concluded. Black's Law Dictionary defines material breach[23] as a "significant enough substantial failure in the performance of a contract, as to give the affected party the right to sue for damages as well as release the aggrieved party from its obligations."

Parties' Arguments

CA

Witness Ray testifies the proposed ICA repeatedly provides that CA's sole remedy for any dispute or issue should be the Agreement's Dispute Resolution provision, but AT&T Florida repeatedly seeks to provide itself with exclusive, one-sided alternative remedies. Witness Ray further argues if AT&T Florida alleges that CA has breached the ICA and CA disputes the allegation, AT&T Florida should be required to follow the dispute resolution provision and prove its allegations before causing fatal harm to CA and CA customers. (TR 43; CA BR 75)

Witness Ray further testifies that under AT&T Florida's proposed language, CA would have the right to invoke dispute resolution, but AT&T Florida would have the right to ignore that and stop CA's service before the dispute is resolved. AT&T Florida suggests that the now-deceased CA could then sue AT&T Florida for damages if it wanted to. (TR 43; CA BR 75)

Witness Ray testifies that AT&T Florida would suffer comparatively inconsequential damage if it destroyed a CLEC even if it later was required to pay damages for doing so without cause. (TR 95; CA BR 76)

[23] Black's Law Dictionary, http://thelawdictionary.org/material-breach/ accessed on May 28, 2015.

AT&T Florida

Witness Pellerin testifies "[i]t is a basic principle of contract law that if a party materially breaches a contract, the other party is excused from its obligation to perform and may treat the contract as terminated." AT&T Florida argues under CA's language, the Commission could find in a formal complaint proceeding (which would take months) that CA was in material breach of the ICA, and AT&T Florida would nonetheless have to continue to perform under the ICA throughout the appeal process, which would likely take years, notwithstanding CA's continuing breach. (TR 202-203; AT&T Florida BR 62)

AT&T Florida argues that if CA has any basis for concern that AT&T Florida is about to wrongfully terminate the ICA, CA can initiate a proceeding at the Commission and simultaneously ask a court to intervene to prevent the termination. However, witness Pellerin testifies that Rule 25-22.0365(d), F.A.C., states that the expedited process is not available if the dispute is "governed by dispute resolution provisions contained in the parties' relevant interconnection agreement" and the ICA will include comprehensive dispute resolution provisions. (TR 203; AT&T Florida BR 64)

Witness Pellerin testifies the point is that Florida law allows termination for material breaches, and parties to contracts, as well as forums, are routinely called upon to determine whether a given breach is or is not material. (AT&T Florida BR 65)

Analysis

This issue involves whether AT&T Florida can terminate CA's service due to a failure to correct a material breach while the Dispute Resolution process has been invoked but not concluded. Witness Pellerin testifies that "[e]ither party needs to be able to terminate the ICA in the event of a material breach by the other party" and "CA's proposed language would improperly obligate AT&T Florida to continue operating pursuant to the ICA for a prolonged period of time notwithstanding CA's material breach." (TR 203)

Witness Ray testifies that if AT&T Florida were to unilaterally cancel the ICA prior to the resolution of a dispute, the cancellation "would be an extinction event for CA." (EXH 27, Bates No. 41) "AT&T Florida wants to be the sole arbiter of what constitutes a legitimate dispute and what does not," and "CA's proposed language allows either party the right to take disputes to the PSC at any time." (TR 94-95)

Witness Pellerin testifies, "[t]he parties' ICA will include comprehensive dispute resolution provisions (GT&C Section 13), and the parties agreed in Section 13.2.1 that the dispute resolution procedures will apply 'to any controversy or claim arising out of or relating to this Agreement or its breach." (TR 203)

Staff is persuaded by CA's argument that termination of the ICA for material breach is most likely an "extinction event." However, AT&T Florida is persuasive that a 45-day notice is sufficient notice to give a party opportunity to cure an alleged material breach.

Staff believes that if a party is not in agreement that a material breach of the contract has occurred, a party may seek recourse by notifying the alleged party that it disagrees. The party may also seek a remedy with the Commission and can initiate a proceeding at the Commission while simultaneously asking a court to temporarily enjoin the threatened termination pending resolution by the Commission. (AT&T Florida BR 64) In the event it is determined termination of the ICA has occurred when a material breach has not occurred, the terminating party would be exposed to liability. (AT&T Florida BR 64, TR 204). The injured party would then have the right to seek relief for termination without cause.

Furthermore, staff believes CA's proposed language "including all appeals" could have the effect of requiring that a party to the ICA perform while a material breach is ongoing. (TR 204) A party should not be required to perform if a material breach is ongoing.

Finally, staff is persuaded by AT&T Florida's arguments that for a material breach to occur, there must be a nonperformance of the contract which goes to the "essence of the contract and is of such significance that it relieves the injured party from further performance of its contractual duties."[24] Staff recommends that termination due to failure to cure a material breach should not be prohibited at any time. Therefore, based on staff's recommendation, AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that termination due to failure to cure a material breach should not be prohibited at any time.

[24] Covelli Family L.P. v. ABG5, L.L.C., 977 So. 2d 749, 752 (Fla. App. 2008).

Issue 20: Should AT&T Florida be permitted to reject CA's request to negotiate a new ICA when CA has a disputed outstanding balance under this ICA? (GT&C § 8.4.6)

Recommendation: No. Staff recommends that AT&T Florida not be permitted to reject CA's request to negotiate a new ICA when CA has a disputed outstanding balance under this ICA if CA has followed the terms of the ICA and deposited all disputed outstanding balances greater than $15,000 into an escrow account. (Bates)

Position of the Parties

CA: No. AT&T Florida's language would allow it to refuse to cooperate with CA to resolve bona fide billing disputes, fail to invoke the dispute resolution provision, and then refuse to negotiate a successor agreement, essentially blackmailing CA into paying disputed charges to continue its operations.

AT&T Florida: Yes. CA should not be permitted to negotiate a new ICA unless it has satisfied its payment obligations under the existing ICA. CA's position to the contrary is squarely at odds with Commission precedent.

Staff Analysis: At issue here is whether AT&T Florida can reject CA's request to negotiate a new ICA if it has an outstanding balance under the terms of the existing ICA. CA believes that if it has complied with the ICA billing requirements, it should not be precluded from negotiating a new ICA, but AT&T Florida believes all disputes under an existing ICA must be resolved before it should be required to negotiate a new ICA.

Parties' Arguments

CA

CA witness Ray testifies that under AT&T Florida's proposed language, it could disregard billing disputes, fail to invoke the dispute resolution provision of the Agreement, and then refuse to negotiate a successor agreement at the end of the term, essentially blackmailing CA into paying disputed charges if it wishes to continue its operations. (TR 43-44)

Witness Ray further testifies that AT&T Florida should not be able to refuse negotiations simply because it has not pursued the Dispute Resolution remedies available to it under this Agreement to resolve disputes with CA. (TR 44; CA BR 79)

In its post hearing brief, CA proposed the Commission adopt its language with these changes:

> [i]f a new interconnection agreement is executed by the parties while billing disputes are pending under this agreement, the terms and conditions of this agreement (and not any successor agreement) shall govern all such billed amounts and billing disputes unless otherwise agreed by both parties.

(CA BR 80-81)

In CA's post hearing brief, witness Ray testifies that on May 29, 2015, the company offered to settle this issue with AT&T Florida as described above but the parties did not reach agreement. (CA BR 81)

AT&T Florida

AT&T Florida believes CA should not be permitted to negotiate a new ICA unless it has satisfied all of its payment obligations pursuant to the existing ICA, including final resolution of disputed amounts. AT&T Florida states CA's language would permit it to negotiate a new ICA with different terms, or request adoption of another CLEC's ICA pursuant to Section 252(i) of the Act, even though it had an outstanding bill, by simply initiating a billing dispute. (TR 205; AT&T Florida BR 67)

AT&T Florida states CA's statement that AT&T Florida would fail to invoke the dispute resolution process or otherwise fail to cooperate with CA in resolving a billing dispute to blackmail CA into paying its bill is absurd. First, it ignores CA's own right to invoke dispute resolution to clear any pending billing disagreements. And second, AT&T Florida has an incentive to handle billing disputes reasonably and expeditiously so that it will be paid what it is owed pursuant to the ICA. (TR 206; AT&T Florida BR 67)

Analysis

Witness Ray testifies,

> [a]lthough AT&T Florida's language throughout this Agreement provides that CA's sole remedy for any dispute or issue should be the Agreement's dispute resolution provision, AT&T Florida repeatedly seeks to provide itself with exclusive, one-sided alternative remedies such as this one.

(TR 43)

Witness Ray believes "that AT&T Florida is already entitled to terminate the Agreement for breach, and if it so terminates then there would be no requirement to negotiate a successor" and believes that AT&T Florida "should not have the right to refuse negotiations simply because it has not pursued the Dispute Resolution remedies available to it under this Agreement to resolve disputes with CA." (TR 44)

Witness Pellerin testifies, "CA should not be permitted to negotiate a new ICA unless it has satisfied all of its payment obligations pursuant to the existing ICA, including final resolution of disputed amounts." (TR 205) She further testifies that AT&T Florida seeks to protect itself from financial losses if CA does not pay its bills. AT&T Florida is concerned that permitting CA to negotiate a subsequent ICA while amounts are still in dispute "might allow them to escape the Terms and Conditions of their existing contract." (EXH 47, Bates No. 1769)

Staff believes CA's position on this issue is more compelling. A legitimate dispute raised and winding its way through the dispute resolution process as envisioned by the ICA, or the expedited process in accordance with Rule 25-22.0365(d), F.A.C., should not prevent a CLEC from negotiating a subsequent agreement following the initial term of that agreement.

Staff believes that if CA is in good standing and has complied with the terms of the ICA, there should be no reason for AT&T Florida to dismiss a request for negotiation of a subsequent ICA. If CA has complied with the provisions enumerated in the ICA and filed a deposit based on two months of estimated usage, and if required, deposited disputed funds in an escrow account, the arbitrated ICA will protect AT&T Florida from the kind of financial losses it has suffered in the past.

For these reasons, staff believes CA's proposed language is more appropriate. If a billing dispute exists and the parties have followed the terms of the ICA, and the ICA is nearing the end of its term, any negotiation for a subsequent contract can and should contain provisions that limit past disputes to be resolved under the terms of the ICA in effect at that time. The new contract being negotiated should make clear that disputes are limited to those occurring under the new ICA.

Conclusion

Staff recommends that AT&T Florida not be permitted to reject CA's request to negotiate a new ICA when CA has a disputed outstanding balance under this ICA if CA has followed the terms of the ICA and deposited all disputed outstanding balances greater than $15,000 into an escrow account.

Issue 22A: Should the disputing party be required to use the billing party's preferred form or method to communicate billing disputes? (GT&C § 11.9)

Recommendation: Yes. Staff recommends the disputing party should be required to use the billing party's preferred form or method to communicate disputes. (Bates)

Position of the Parties

CA: No. CA believes that any mechanism whereby the billing party is provided written notice of a dispute which contains sufficient details to describe the dispute should be adequate.

AT&T Florida: Yes. AT&T deals with many CLECs and is able to process billing disputes most expeditiously when they use a standard mechanism for submitting them. Allowing CA to use a non-standard format would serve only to inject delay and confusion into the processing of billing disputes.

Staff Analysis: This issue involves whether a party disputing a bill should be required to use the billing party's form or method to communicate billing disputes. CA believes a billing party should be permitted to submit billing disputes with any form if the form contains all relevant information, while AT&T Florida believes a standardized process is more appropriate.

Parties' Arguments

CA

In his direct testimony, witness Ray testifies that AT&T Florida has a history of inaccurate CLEC billing and CA must devote substantial resources to monthly billing disputes for the same issues. Automatically submitting billing disputes using CA's form and systems saves resources. (TR 44-45; CA BR 82)

Witness Ray testifies that since billing disputes arise solely because of AT&T Florida billing errors in the first place, CA should not have to bear the cost of using AT&T Florida's form. Requiring CA to use AT&T Florida's "special form" spreadsheet for each dispute increases costs for processing billing disputes because CA must dedicate one or more employees to transfer dispute details from CA's form and place those same details on AT&T Florida's form. (TR 97; CA BR 83)

AT&T Florida

Witness Pellerin testifies bills can be voluminous and disputes are frequent. For AT&T Florida to efficiently process disputes, it is essential that all carriers use AT&T Florida's standard dispute form because it is compatible with its billing and collection system. Witness Pellerin opines that AT&T Florida would have to expend resources of its own if the Commission were to allow CA to use a different method to lodge billing disputes than every other CLEC in Florida. (TR 209-211; AT&T Florida BR 68-69)

Witness Pellerin acknowledges that CA may have to expend some additional resources though she was not sure how substantial those resources would be. (TR 210)

Analysis

Witness Ray testifies that in his experience, AT&T Florida regularly rejects billing disputes because they cannot determine from the description of the dispute what the problem is. The dispute then escalates requiring the CLEC to provide additional text of “what's going on.” CA wants to use its own dispute form because it provides adequate space to fully describe the dispute. (TR 142) AT&T Florida countered that it deals with many CLECs and many disputes so a standard form is necessary, and other CLECs do not object to AT&T Florida’s form. (TR 209-211)

Staff is persuaded by AT&T Florida’s testimony on this issue. With the volume of CLECs and disputes AT&T Florida handles, it appears a standard dispute form is reasonable. Staff believes that AT&T Florida’s proposed language should be approved.

Conclusion

Staff recommends the disputing party should be required to use the billing party’s preferred form or method to communicate disputes.

Issue 22B: Should CA use AT&T Florida's form to notify AT&T Florida that it is disputing a bill? (GT&C § 13.4)

Recommendation: Yes. Staff recommends CA should be required to use AT&T Florida's form to notify AT&T Florida that it is disputing a bill. (Bates)

Position of the Parties

CA: No. CA sees no reason why AT&T Florida should not process disputes in good faith solely because they are not on a special form. CA believes that any mechanism whereby the billing party is provided written notice of a dispute which contains sufficient details to describe the dispute should be adequate.

AT&T Florida: Yes. See AT&T Florida's Position for Issue 22A.

Staff Analysis: This issue asks whether CA should be required to use AT&T Florida's form to notify AT&T Florida of a billing dispute. CA believes it should be permitted to submit billing disputes with its form because it is not as complicated as AT&T Florida's submission procedure. AT&T Florida believes CA should follow the same process as other CLECs it does business with.

Parties' Arguments

CA

Witness Ray testifies there are two reasons CA wants to use its own form for communicating billing disputes. Primarily, AT&T Florida's form does not provide adequate space to fully describe the issue. Secondly, AT&T Florida's form requires fields to be populated even when they're not relevant to the dispute at hand. (TR 142; CA BR 83)

Witness Ray testifies that use of AT&T Florida's form has presented delays in resolving disputes, and CA's form has additional space for clarification. In addition, CA's systems automatically generate their form. There are "seven different elements which must be included with a billing dispute in order for it to be processed" and CA believes that as long as it provides these seven elements, it has provided adequate detail for AT&T Florida to resolve the dispute. (TR 143-144; EXH 27, Bates No. 45; CA BR 83)

AT&T Florida

Witness Pellerin testifies the company has worked with other carriers to ensure they are using AT&T Florida's billing dispute form and there is no reason for CA to be treated differently. (TR 38; AT&T Florida BR 69)

Witness Pellerin acknowledges that CA may have to expend some additional resources and can design its process to use AT&T Florida's dispute form from the outset. If CA uses its own form, AT&T Florida will have to expend additional resources. Since CA wishes to dispute a bill, CA should have to bear the cost for doing so. (TR 210-211; AT&T Florida BR 70)

Analysis

This issue is similar to Issue 22A. This issue asks whether CA should be required to use AT&T Florida's form to notify AT&T Florida of a billing dispute. Staff believes that AT&T Florida's standard form should be used for disputes.

As CA witness Ray testifies in Issue 22A, in his experience billing disputes are rejected by AT&T Florida because AT&T Florida cannot determine from the dispute description what the problem is which then escalates the dispute where the CLEC has to provide additional information containing the full text of what's going on. CA wants to use its own dispute form because it provides adequate space to fully describe the dispute. (TR 142)

Witness Ray testifies that, "the use of AT&T Florida's spreadsheet for each dispute submittal requires substantial extra resources to be allocated by CA to the processing of billing disputes, as CA must dedicate one or more employees to manually take the dispute details from CA's dispute form and place those same details upon AT&T Florida's form. (TR 44-45)

Witness Pellerin testifies that, "[b]ills for services provided under an ICA can be voluminous and complex, and billing disputes are frequent. In order for AT&T Florida to efficiently process the many disputes it receives from numerous carriers, it is essential that all carriers use the same form. AT&T Florida's standard dispute form is compatible with AT&T Florida's billing and collections systems." (TR 209)

Staff is not convinced the use of AT&T Florida's billing dispute form will increase CA's costs if it utilizes it from the outset of the ICA term. Staff believes that because of the number of CLECs and disputes AT&T Florida handles each month, a standard form is a reasonable requirement. Staff believes AT&T Florida's proposed ICA language should be used.

Conclusion

Staff recommends CA should be required to use AT&T Florida's form to notify AT&T Florida that it is disputing a bill.

Issue 23A, B and C: Should a party that disputes a bill be required to pay the disputed amount into an interest-bearing escrow account pending resolution of the dispute? (GT&C § 11.9 through § 11.12, § 11.13.2 through 11.13.4, § 12.4.3, § 12.4.4 and § 12.6.2)

Recommendation: Yes. Staff recommends the terms of the ICA should require an escrow account be established for the purpose of depositing disputed amounts during the pendency of a dispute. (Bates)

Position of the Parties

CA: No. CA objects to and has stricken AT&T's unreasonable requirement that all disputed charges must be paid into escrow by CA.

AT&T Florida: Yes. AT&T Florida ILECs have lost hundreds of millions of dollars to carriers that disputed their bills and then lacked the funds to pay the amounts they owed when the disputes were resolved in the ILECs' favor. AT&T's escrow language is a reasonable measure to prevent this.

Staff Analysis: At issue is whether a disputing party should be required by the terms of the ICA to establish an interest bearing escrow account into which disputed amounts exceeding $15,000 be deposited. CA objects to the escrow account provisions because deposit requirements are already in place for this purpose, and AT&T Florida believes an escrow account is necessary to protect itself from uncollectable amounts.

Parties' Arguments

CA

Witness Ray testifies that AT&T Florida's proposed escrow requirement is clearly unfair to CA, as it would permit AT&T Florida to bill CA any amount that it chooses "in error" and CA, through no fault of its own, would automatically be in default of this agreement if it was unable to raise the funds that AT&T Florida incorrectly billed and place them into escrow. (TR 45; CA BR 89)

CA argues the escrow provision is duplicative because CA already agrees to AT&T Florida's deposit requirement in the ICA, and that provides adequate assurance of payment to AT&T Florida if it timely invoked dispute resolution for unpaid bills. (TR 46; CA BR 89)

Witness Ray testifies, "[i]f this escrow language were fair, it would require AT&T Florida to reimburse the CLEC both for the cost of capital and administrative costs for escrow." (TR 99; CA BR 89)

AT&T Florida

Witness Pellerin testifies that if either party disputes the other's bill, the disputing party must, subject to certain exceptions, pay the disputed amount into an escrow account, so that once the dispute is resolved, the escrowed funds, along with the interest those funds earn, can be disbursed in accordance with that resolution. The escrow requirement ensures that if the Billed Party disputes a bill and the dispute is resolved in favor of the Billing Party, there will be funds available to pay what is owed. (TR 212; AT&T Florida BR 72)

Witness Pellerin testifies deposits are a “critical mechanism to help protect the billing party against losses” but it is not an alternative to escrow. Deposits address the creditworthiness of the CLEC, while escrow provisions ensure funds are available to pay for charges that are disputed. (TR 213)

The escrow provision in the ICA “carves out exceptions to the escrow requirement . . . include[ing] situations where (i) the amount disputed is less than $15,000 (Section 11.9.1.1); (ii) CA has maintained 12 months of timely payment and unpaid amount is 10% or less of the current bill (Section 11.9.1.2); and (iii) when an obvious billing error has occurred (Section 11.9.1.3).” (TR 282; AT&T Florida BR 76)

Witness Pellerin testifies that CA can avoid the costs of establishing an escrow account by paying the disputed amount instead of withholding it, and if the dispute is resolve in CA’s favor, the amount will be credited back to CA. (TR 283)

Analysis

This issue is central to the billing section of the proposed agreement, as well as several other issues in this recommendation. It involves whether disputed amounts in excess of $15,000 should be paid into an escrow account pending resolution of the dispute.

Witness Ray believes the requirement to establish an escrow account is “unfair to CA, as it would permit AT&T Florida to bill CA any amount that it chooses ‘in error’ and CA, through no fault of its own, would automatically be in default of this agreement if it was unable to raise the funds that AT&T Florida incorrectly billed and place them into escrow.” Witness Ray believes the deposit requirements “provide adequate assurance of payment to AT&T Florida if it timely invoked Dispute Resolution, including use the Commission’s expedited dispute resolution process if it chooses, limiting its exposure and obtaining finality on any disputes.” (TR 45-46)

According to witness Pellerin, “the AT&T Florida ILEC in the Southeast Region has written off over $245 million in such losses in the last ten years, including over $17 million in Florida” and provisions for an escrow account will limit future losses. (TR 213)

In her rebuttal testimony regarding deposit requirements, AT&T Florida witness Pellerin testifies, “deposit and escrow terms serve different purposes. Deposits address . . . creditworthiness,” and “[e]scrow provisions are designed to ensure that funds are available to pay for charges that are disputed after the dispute is resolved.” (TR 284)

AT&T Florida’s proposal establishes a threshold of $15,000 to require an escrow account. AT&T Florida witness Pellerin states that total disputed amounts under $15,000 can be withheld. (EXH 47, Bates No. 1772) This provision protects both parties: if the disputes are small, CA will not have to go through the inconvenience of setting up an escrow account, and if the disputes become large, AT&T Florida is protected from continuing financial risk.

Staff believes the establishment of an interest bearing escrow account is a necessary tool that limits the exposure of the billing party to uncollectable disputed amounts. Deposits into escrow should be limited to the amount in dispute. Staff also believes that the establishment of an escrow account benefits both parties. Each party is protected financially during the dispute, and having the funds in escrow will provide an incentive to resolve disputes expeditiously. Also, because the threshold is $15,000, small disputes may be withheld during the dispute. Because both parties will benefit from an escrow provision, staff recommends that the costs for establishing and maintaining the escrow account be borne equally by the parties.

According to AT&T Florida’s proposed language, following resolution of the dispute(s), funds will be disbursed to the prevailing party and will include the disputed amount, appropriate late payment charge(s), and the interest generated from the escrow account.

The timely resolution of disputes, avoiding or limiting frivolous disputes, and limiting the financial exposure of the billing party drives staff’s goal in recommending the escrow account provisions. The requirement to establish an escrow account should act as an incentive to limit frivolous disputes. Staff believes this is a reasonable provision and recommends that it be approved. For these reasons, staff believes AT&T Florida’s proposed language is more appropriate.

Conclusion

Staff recommends the terms of the ICA should require an escrow account be established for the purpose of depositing disputed amounts during the pendency of a dispute.

Issue 24i: Should the ICA provide that the billing party may only send a discontinuance notice for unpaid undisputed charges? (GT&C § 12.2)

Recommendation: No. Staff recommends the ICA should provide that the billing party may send a discontinuance notice for unpaid charges. (Bates)

Position of the Parties

CA: Yes. CA must have a right to not pay disputed charges, until conclusion of the dispute resolution process. AT&T Florida should not be permitted to unilaterally cause potentially fatal harm to its competitor without due process.

AT&T Florida: The question that is actually presented by the disagreement in the first sentence of GT&C § 12.2 is whether disputed amounts must be paid, either to the Billing Party or into escrow. The answer to that question is yes, for the reasons set forth above in connection with Issue 23.

Staff Analysis: This issue addresses the criteria for sending a discontinuance notice for unpaid, undisputed charges. CA believes a notice should not be sent prior to conclusion of the dispute resolution process, but AT&T Florida frames the issue as whether disputed amounts should be paid to the billing party or into escrow.

Parties' Arguments

CA

Witness Ray testifies that since AT&T Florida is entitled to a two-month service deposit from CA at all times, AT&T Florida has not shown that it would suffer undue risk or exposure if it timely invoked dispute resolution in order to get finality when billing disputes were not resolved between the parties, including access to the Commission's expedited dispute resolution process. (TR 46-47; CA BR 96)

AT&T Florida

Witness Pellerin testifies the question actually presented by the disagreement is whether disputed amounts must be paid either to the Billing Party or into escrow. The answer to that question is yes, for the reasons summarized in Issue 23. (TR 222; AT&T Florida BR 81)

Analysis

According to CA, the disagreement between the parties is whether a billing party may send a discontinuance notice for unpaid, undisputed charges; however, AT&T Florida frames the disagreement as whether disputed amounts should be deposited into escrow. (TR 46-47, 222)

Witness Ray testifies that "AT&T Florida should not be permitted to unilaterally cause potentially fatal harm to its competitor without due process" and that "AT&T Florida has not shown that it incurs substantially higher risk by giving CA 30 days to raise funds to make payment to AT&T Florida before disconnecting services." (TR 46)

AT&T Florida's proposed language modifies GT&C Section 12.2 to incorporate provisions for the escrow account proposed in Issue 23. The existing language "to 'pay' a bill means to pay all undisputed charges to the Billing Party" is modified to include the provision to pay "Disputed

Amounts either to the Billing Party or into an escrow account." (EXH 2, p. 37) Defining the amounts deposited into escrow as being "paid" is consistent with staff's recommendation in Issue 13, however, this is in tension with that portion of GT&C Section 2.164 (Issue 13C) which requires funds be accessible to be considered paid.

Staff believes a billed party should pay undisputed charges to the billing party and either pay disputed charges to the billing party or pay them into an escrow account pending resolution of the dispute. Therefore, staff recommends that AT&T Florida's proposed language be approved.

Conclusion

Staff recommends the ICA should provide that the billing party may send a discontinuance notice for unpaid charges.

Issue 24ii: Should the non-paying party have 15 or 30 calendar days from the date of a discontinuance notice to remit payment? (GT&C § 12.2)

Recommendation: Staff recommends the ICA should provide that the non-paying party should be given 15 calendar days from the date of a discontinuance notice to remit payment. (Bates)

Position of the Parties

CA: 30 days. AT&T has not shown that it incurs substantially higher risk by giving CA 30 days to raise funds to make payment to AT&T before disconnecting services.

AT&T Florida: The non-paying party should have 15 calendar days from the date of a discontinuance notice to remit payment. That party has already had 31 days from the bill date to pay before the bill becomes past due.

Staff Analysis: This issue addresses the length of time a billed party must submit payment after a discontinuation notice to prevent service disruption. CA believes 15 calendar days is insufficient time for the company to track a possible missing payment, and AT&T Florida believes the 15 calendar days is sufficient time to address a discontinuance notice because it is in addition to the 30 calendar days a CLEC has to pay its bill.

Parties' Arguments

CA

Witness Ray testifies the reason CA needs 30 days from the discontinuance notice is "that the most likely scenario is that there is a payment posting error on AT&T Florida's side or a payment was not received." It is not reasonable to expect a CLEC to track down a payment and then get it corrected in 14 days. (TR 101; CA BR 97)

AT&T Florida

Witness Pellerin testifies the proposed 15-day period is sufficient time after receiving a Discontinuance Notice for the Billed Party to pay Unpaid Charges, either to the Billing Party or into escrow. Since the Discontinuance Notice cannot be sent to the Billed Party until after the charges are already Past Due (meaning the carrier has already had at least 31 days to pay), the carrier actually has a minimum of 46 days from the invoice date to avoid service disconnection. (TR 223; AT&T Florida BR 81)

Analysis

Witness Ray testifies that 30 days is a reasonable period of time because "[i]t is not reasonable to expect the CLEC to track down what happened to the payment, then get it corrected in 14 days" and the "focus here needs to be on the harm done to the CLEC if AT&T Florida is wrong and terminates services, versus the harm done to AT&T Florida if the CLEC has an extra 14 days." (TR 101)

Witness Pellerin testifies, "AT&T Florida's proposed 15-day period is sufficient time after receiving a Discontinuance Notice for the Billed Party to pay Unpaid Charges, either to the

Billing Party or into escrow." According to witness Pellerin, "the carrier actually has a minimum of 46 days from the invoice date to avoid service disconnection." (TR 223)

Staff agrees that a 15-day period after receipt of a discontinuance notice is sufficient for a billed party to remit payment or deposit disputed amounts into escrow. Staff is persuaded by AT&T Florida that this period of time, coupled with the month to pay the original invoice, is sufficient.

Conclusion

Staff recommends the ICA should provide that the non-paying party should be given 15 calendar days from the date of a discontinuance notice to remit payment.

Issue 25: Should the ICA obligate the billing party to provide itemized detail of each adjustment when crediting the billed party when a dispute is resolved in the billed party's favor? (GT&C § 11.13.1)

Recommendation: Yes. Staff recommends the billing party should be obligated to provide itemized detail of each adjustment when crediting the billed party when a dispute is resolved in the billed party's favor, unless otherwise agreed by the parties. (Bates)

Position of the Parties

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

AT&T Florida: No. AT&T will provide the associated claim number when processing billing dispute credits where its systems are capable of doing so. However, there may be some instances where that is not possible, and AT&T should not be contractually obligated to do the impossible.

Staff Analysis: At issue here is whether the billing party should be required to provide itemized detail of each adjustment when crediting the billed party during resolution of disputes in favor of the billed party. CA believes there is no reason AT&T Florida would not be able to identify which disputes it was resolving and AT&T Florida believes circumstances may exist that limit its ability to do so.

Parties' Arguments

CA

Witness Ray testifies that if AT&T Florida is not required to reference a specific dispute for each credit given on CA's bill, CA will be unable to determine which disputes should be closed and which need to stay open. There is no reason why AT&T Florida should not identify the dispute when CA has prevailed and receives a credit. (TR 47; CA BR 98)

Witness Ray also testifies

> [W]hen filing a billing dispute with AT&T Florida, CA is required to provide . . . the BAN, invoice number, invoice date, IOSC code, circuit ID, telephone number and/or order number for each dispute. If CA is to be required to provide such details, it is clearly in the interest of parity that AT&T Florida should be required to identify which dispute it is providing credits for and in what amounts when CA prevails.

(TR 47)

It is important to remember that by the time AT&T Florida issues a credit, it has already made a billing error, CA has already had to spend time and resources to dispute the incorrect charge, and AT&T Florida has then admitted that it made a billing error. Since AT&T Florida would have already admitted its error, the least it should do is account for the credit it issued to correct that error. (CA BR 99)

Witness Ray testifies that CA would "agree to the addition of a proviso stating '[u]nless otherwise agreed by the parties or ordered in a Dispute Resolution proceeding' so that the parties could waive this requirement upon mutual agreement to resolve a large class dispute." (CA BR 99)

AT&T Florida

Witness Pellerin testifies that AT&T Florida opposes CA's proposed language requiring the Billing Party to "identify each specific adjustment or credit with the dispute reference number provided by the Billed Party in its dispute of the charges being credited." AT&T Florida is perfectly willing to provide that information when it can, and will do so. (TR 224; AT&T Florida BR 82)

Witness Pellerin testifies there may be circumstances where providing all the dispute details might not be possible, such as a settlement agreement. (TR 293-294; AT&T Florida BR 83)

AT&T Florida would be willing to accept CA's language with the added words, "When the billing system permits," so that the entire sentence would read, "When the billing system permits, the Billing Party shall identify each specific adjustment or credit with the dispute reference number provided by the Billed Party in its dispute of the charges being credited." (AT&T Florida BR 84)

Analysis

Witness Ray testifies that, "[i]f AT&T Florida is not required to reference a specific dispute for each credit given on CA's bill, CA will be unable to ever determine which disputes should be closed and which need to stay open" and "[t]here is no reason why AT&T Florida should not or cannot identify the original dispute when CA has prevailed and AT&T Florida issues the resulting credits." (TR 47)

In her direct testimony, witness Pellerin writes, "if a billing dispute is resolved (in whole or in part) in favor of the party that disputed the bill, the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party" but objects to being required to "identify each specific adjustment or credit with the dispute reference number provided by the Billed Party in its dispute of the charges being credited" as proposed by CA. (TR 224)

Witness Pellerin testifies that AT&T Florida is "is willing to provide that information when it can" but "there may be instances where that is not possible, and AT&T Florida should not be contractually obligated to do the impossible." (TR 224) Witness Pellerin testifies there may be instances when AT&T Florida is not able to include the level of detail as proposed by CA, and the example she gives is a settlement agreement. (TR 294)

Since this issue relates to credits based on resolution of billing disputes, the starting point is to determine what information the ICA requires to file a billing dispute. When a party files a billing dispute based on the terms of the ICA, GT&C Section 13.4 apply. In pertinent part, the ICA requires "the date of the bill in question, the account number or other identification, the telephone number, any USOC, the amount billed, the amount in question, and the reason the amount is being disputed." (EXH 2, p. 40)

The data required of a party to dispute a billing error is not substantially different from the remittance information necessary when a billed party remits payment. (See Issue 13Aii) Witness Pellerin testifies in Issue 13Aii that "the remittance information is the only way AT&T Florida can know to what accounts payments are to be credited." Similarly, "CA will be unable to ever determine which disputes should be closed and which need to stay open" should AT&T Florida not be required to provide relevant Dispute ID numbers. (TR 47; CA BR 98)

Staff agrees that circumstances may exist where this level of detail is not available. A settlement agreement covering a large number of disputed amounts may make it difficult to provide the information required by CA for "a fair accounting of billing credits related to its disputes," but it is not impossible if agreed upon by the parties. In this case, AT&T Florida is seeking to be treated in a manner that is not supported by the clear terms of the ICA Dispute Resolution section. (TR 102)

Staff believes that CA's proposed language, "[t]he Billing Party shall identify each specific adjustment or credit with the dispute reference number provided by the Billed Party in its dispute of the charges being credited" is reasonable. However, AT&T Florida's testimony regarding settlement agreements is also persuasive. Staff believes that including the phrase "unless otherwise agreed to by the parties" will provide a reasonable compromise. Staff recommends that General Terms and Conditions 11.13.1 include the following language:

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

For these reasons, staff believes CA's proposed language with a staff modification is appropriate.

Conclusion

Staff recommends the billing party should be obligated to provide itemized detail of each adjustment when crediting the billed party when a dispute is resolved in the billed party's favor, unless otherwise agreed by the parties.

Issue 27: Should the ICA permit CA to dispute a class of related charges on a single dispute notice? (GT&C § 13.4.3.8)

Recommendation: No. Staff recommends the ICA should not permit a party to dispute a class of related charges on a single dispute notice, unless otherwise agreed by the parties. (Bates)

Position of the Parties

CA: Yes. CA should be entitled to dispute a class of charges in a single dispute notice because AT&T may bill for a single incorrect charge using hundreds or thousands of separate line items on a bill.

AT&T Florida: No. AT&T accepts bulk disputes in some cases, but its billing system cannot accommodate bulk disputes in all instances that would be required under CA's proposed language.

Staff Analysis: The issue here is whether a disputing party may dispute a class of related charges in a single dispute notice, as long as the dispute information provided relates to all disputes in the class as a whole. CA believes it should be able to dispute a class of charges on a single dispute notice, and while AT&T Florida does accept bulk billing disputes, they do so on an individual case basis and should not be standard operating procedure.

Parties' Arguments

CA

In his direct testimony, witness Ray testifies that CA should be entitled to dispute a class of charges in a single dispute notice because AT&T Florida may bill for an incorrect charge using hundreds or thousands of separate line items on a bill. If CA were required to dispute each individual line item this could potentially amount to thousands of discreet disputes each month for the same issue and would be a tremendous waste of time and there is no benefit to that approach. (TR 48; CA BR 100)

Witness Ray testifies that if CA gets a bill "that contains 20 pages of interconnection trunk charges that are--that are together, then we believe we should be able to dispute the entire section where all of the charges are the same thing, and it's all the same dispute and they've just broken it out on a per-trunk basis several hundred times." (EXH 46, Bates No. 1572)

AT&T Florida

CA proposes language that would require AT&T Florida to accept a billing dispute that includes an entire class of related charges on a single dispute notice. Normal monthly recurring and nonrecurring charges should be disputed at the billed item level and the AT&T Florida dispute template is structured in that manner. (TR 228; AT&T Florida BR 84-85)

AT&T Florida does accept bulk billing disputes in some instances, generally as a result of an agreement on an individual case basis. (TR 228; AT&T Florida BR 85)

On the other hand, if CA filed a single dispute for the nonrecurring charges for all types of UNE loops because CA considered those charges to be "related," AT&T Florida probably would not be able to accommodate all the disputes on a bulk basis. (TR 295; AT&T Florida BR 85)

Analysis

Witness Ray testifies that, “CA should be entitled to dispute a class of charges in a single dispute notice because AT&T Florida may bill for an incorrect charge using hundreds or thousands of separate line items on a bill” and “[i]f CA were required to dispute each individual line item, it would be a tremendous waste of time for both parties and there is no benefit to that approach.” (TR 48)

Witness Pellerin testifies that AT&T Florida objects to CA’s proposed language because it “would obligate AT&T Florida to accept a billing dispute that includes an entire class of related charges on a single dispute notice,” and “CA’s language would obligate AT&T Florida to accept multiple billing disputes on a single dispute notice, even if AT&T Florida could not process those particular individual disputes on a bulk basis.”

Staff recommended in Issue 22B that CA should be required to use AT&T Florida’s dispute form to notify AT&T Florida of disputes, and it would not be appropriate to deviate from that recommendation in this issue.

If a billing dispute contains many elements, and all of these elements are related to a specific BAN, it seems appropriate that the parties will attempt to resolve a dispute like this with a settlement agreement. For these reasons, staff believes AT&T Florida’s proposed language is more appropriate.

Conclusion

Staff recommends the ICA should not permit a party to dispute a class of related charges on a single dispute notice, unless otherwise agreed by the parties.

Issue 29i: Should the ICA permit a party to bring a complaint directly to the Commission, bypassing the dispute resolution provisions of the ICA? (GT&C § 13.9.1)

Recommendation: No. Staff recommends that the ICA should not permit a party to bring a complaint directly to the Commission, bypassing the dispute resolution provisions of the ICA. (Flores)

Position of the Parties

CA: Yes. CA seeks to include specific language in the ICA permitting either party to seek formal or informal relief from the Commission at any time, including use of the Commission's Expedited Dispute Resolution process, for an alleged violation, whether or not it invokes the dispute resolution process in this Agreement.

AT&T Florida: No. The dispute resolution provisions of the ICA provide the framework for dispute resolution. Neither party should burden the Commission with a complaint alleging a violation of the ICA without first attempting to resolve the issue informally, which is what the agreed dispute resolution provisions require.

Staff Analysis: Issue 29i addresses whether the parties can bring a complaint directly to the Commission and bypass the dispute resolution provisions of the ICA. CA is seeking to add the following language to §13.9.1 of the ICA which would allow either party to seek formal or informal relief from the Commission at any time.

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

(EX 2, p. 34)

However, §13.6.1 of the ICA, which both parties already agree to, provides that the formal Dispute Resolution procedures cannot be invoked earlier than after sixty days of Informal Dispute Resolution by the parties.

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

(EXH 2, p.33)

Rule 25-22.0365, F.A.C., Expedited Dispute Resolution Process for Telecommunications Companies, specifies that to be considered for an expedited proceeding, the companies involved in the dispute must have attempted to resolve their dispute themselves, and followed the dispute resolution terms of the ICA.

Parties' Arguments

CA

CA asserts that it can bypass any terms and conditions in the ICA and utilize the Commission's Expedited Dispute Resolution Process under Rule 25-22.0365, F.A.C., Expedited Dispute Process for Telecommunications Companies, to file any type of dispute at any stage of the contract even after approval of the ICA by the Commission. CA believes that whether there is a material breach or a minor infraction of the ICA, the parties can directly address their issues with the Commission through any of the methods established under Resolution for Disputes ICA 13.0. CA maintains that it is seeking the right to PSC assistance as a counter-balance to AT&T Florida's position of overwhelming market power. (TR 103)

CA believes that the AT&T Florida's proposed language and position on the ICA Resolution Process 13.0 is detrimental because:

- CA has a statutory right to seek relief from the Commission at any time, including use of the Commission's Expedited Dispute Resolution Process for violations. (TR 50-51)

- CA believes there are number of actions that AT&T Florida might take using its monopoly power which could cause severe harm to CA. CA may not have the luxury of invoking Dispute Resolution while AT&T Florida runs out the clock, because CA and its customers could be suffering severe harm due to AT&T Florida actions. (TR 51)

- CA believes that AT&T Florida prefers its elective commercial arbitration provision which CA has not stricken because it is elective. However, CA would never elect commercial arbitration because CA believes commercial arbitrations lack the subject matter expertise to decide complex disputes between telecommunications companies.

(TR 50)

CA believes that certain disputes that could be service-affecting and extremely detrimental to CA need to be taken directly to the Commission and resolved immediately. CA asserts that it is not seeking a waiver of informal dispute resolution initiated within the Commission's expedited dispute process rule; it is simply seeking a means to circumvent the 60-day informal dispute timeframe for discussions. (CA BR 102)

AT&T Florida

AT&T Florida alleges that any dispute about the contract should follow the Dispute Resolution Process contained in ICA 13.0 where the parties should seek an informal process for 60 days, and if not resolved, should seek the arbitration process with the Commission. However, AT&T Florida believes that once the contract is approved by the Commission, any dispute should be considered a breach of contract. (TR 230-231)

For handling disputes about safety issues, AT&T Florida assumes an entirely different position, and considers that a dispute related with safety issues may be a long time-consuming process which will affect AT&T Florida operations negatively, so AT&T Florida will not invoke the ICA 13.0 Resolution Process. On these disputes, and in some cases depending on the magnitude of any dispute, AT&T Florida will consider a safety issue to be a breach of contract and consider that it is not obligated to follow the Dispute Resolution Process and instead be considered an immediate breach of the contract. (EXH 50, Bates Nos. 1918-1921)

AT&T Florida recognizes that once the agreement is approved, the parties are governed by the ICA and not by the Act. (TR 233) AT&T Florida opposes CA's proposed language not to follow the guidelines of the dispute resolution process (13.0) of the ICA because:

- The parties should not be allowed to seek relief from the Commission at any time and instead should try to resolve any disagreement that arises under the ICA by the informal dispute resolution process set forth in the ICA. (TR 230)

- Once the Commission approves the contract, any claims that the parties may have against each other will be claims for breach of contract, not claims for violations of laws and regulations. (TR 230)

- Once the Commission approves the parties' ICA, the parties' relationships with respect to the matters covered by the ICA are governed solely by the ICA, and not by any laws or regulations pursuant to which the ICA was made.

(TR 230)

Analysis

Staff believes that whether a dispute is a material breach or minor breach, the parties should strictly follow the Dispute Resolution Process in the ICA as the best method to resolve the dispute. Staff concurs with AT&T Florida's position that neither party should come before the Commission with a complaint alleging a violation of the ICA without first attempting to resolve the issue informally.

Although CA is seeking to add language to the ICA allowing either party to seek formal or informal relief from the Commission at any time, §13.6.1 of the ICA, which both parties already agree to, provides that the formal Dispute Resolution procedures cannot be invoked earlier than after sixty days of Informal Dispute Resolution by the parties. CA also provides an example of a possible dispute such as AT&T Florida terminating a critical service like Local Interconnection. CA admits that it would first attempt informal resolution with AT&T Florida before seeking help from the Commission. (CA BR 104) CA also notes in its Brief that if a party seeks to use the Commission's Expedited Dispute Resolution Process, the party must affirm that it has attempted informal resolution first. CA states that it is not seeking a waiver of that requirement. It simply seeks to not have to wait if AT&T Florida is not engaging in good faith discussions after CA has made the attempt to informally resolve the issue. (CA BR 102)

The parties should work to strive to communicate more actively with each other and follow the different dispute timeframes, whether informal or formal, so as to improve the parties' process during the 60 day period of informal conference, and follow the dispute resolution methods contained in the ICA.

Staff believes a party cannot bypass the dispute resolution provisions of the ICA and bring a complaint directly to the Commission. Staff notes that after the 60-day dispute resolution provision of the ICA, a party may file a standard petition with the Commission, or initiate the expedited Dispute Resolution process. Based on staff's analysis, staff believes that AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that the ICA should not permit a party to bring a complaint directly to the Commission, bypassing the dispute resolution provisions of the ICA.

Issue 29ii: Should the ICA permit a party to seek relief from the Commission for an alleged violation of law or regulation governing a subject that is covered by the ICA? (GT&C § 13.9.1)

Recommendation: Yes. Staff recommends that the ICA should permit a party to seek relief from the Commission for any disputes regarding the ICA, but only after the Dispute Resolution provisions of the ICA have been followed. (Flores)

Position of the Parties

CA: Yes. CA believes that the Commission is the most appropriate forum for disputes to be heard, because only the Commission has the subject matter expertise to fully understand technical details which may be at issue between the parties.

AT&T Florida: No. Once an ICA is in effect, the parties are bound by it, and not by the 1996 Act and the FCC's implementing regulations. Parties to an ICA can therefore have no claims against each other for violations of the 1996 Act or the FCC's implementing regulations.

Staff Analysis: Issue 29ii addresses whether the parties can seek relief from the Commission for an alleged violation of law or regulation governing a subject that is covered by the ICA. Federal law, 47 U.S.C. §252, and Florida law, §364.16, F.S., designate the Florida Public Service Commission as the primary authority to interpret and enforce those interconnection agreements that the Commission approves. CA is seeking to add language to §13.9.1 of the ICA which would allow either party to seek relief from the Commission for an alleged violation of any law or regulation by the other party, whether or not dispute resolution procedures have been followed.

Parties' Arguments

CA

CA believes that regulations or laws outside of the ICA still apply even after the ICA is in effect. If AT&T Florida is refusing to connect or repair service, the CLEC suffers great harm. If AT&T Florida takes some action against the CLEC or its customers that is in dispute, the CLEC suffers far greater harm than does AT&T Florida. (TR 103-104)

CA's principal argument in Issue 29ii is a repeat of arguments made in Issue 29i **that** CA should be allowed to seek formal or informal relief from the Commission at any time. It did not provide any direct testimony on Issue 29ii. However, staff questioned CA in a staff interrogatory as to what CA's position was regarding AT&T Florida witness Pellerin's testimony on Issue 29ii. CA states that counsel would respond to this interrogatory in a supplemental response. (EXH 27, p.16) However, no supplemental response was received.

AT&T Florida

AT&T Florida believes that the reference to "any law or regulation" must be rejected, because once the ICA is in effect, the only claims the parties can have against each other will be claims for breach of the ICA. It contends that neither party will be able to assert a claim against the other for violation of the Act or the FCC's implementing regulations. (AT&T Florida BR 90)

AT&T Florida emphasizes that Section 251(c) does not require an ILEC to do anything that is not included in an ICA. It cites numerous court decisions which state that once an ICA is approved, the parties are governed by the ICA. (AT&T Florida BR pp. 91-92) AT&T Florida stresses that CA's proposed language for GT&C §13.9.1 stating that the parties may seek relief from the Commission not only for an alleged violation of the ICA, but also for an alleged violation of "any law or regulation by the other party" must be rejected because it is contrary to law. (AT&T Florida BR 93)

Analysis

Section 364.16(6), F.S., states:

> Upon petition, the commission may conduct a limited or expedited proceeding to consider and act upon any matter under this section. The commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other matters. The commission shall implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies. The process implemented by the commission shall, to the greatest extent feasible, minimize the time necessary to reach a decision on a dispute. The commission may limit the use of the expedited process based on the number of parties, the number of issues, or the complexity of the issues. For any proceeding conducted pursuant to the expedited process, the commission shall make its determination within 120 days after a petition is filed or a motion is made. The commission shall adopt rules to administer this subsection.

(emphasis added)

Section 364.16, F.S., does not specify which disputes the Commission can act upon. AT&T Florida believes that the reference to "any law or regulation" must be rejected, because once the ICA is in effect, the only claims the parties can have against each other will be claims for breach of the ICA. (AT&T Florida BR 90) AT&T Florida believes that once an ICA is approved, the parties are governed by the ICA, and alleged violations of any law or regulation by the other party must be handled within the scope of the ICA. (AT&T Florida BR pp. 91-92) However, the Expedited Dispute Resolution Process codified in Rule 25-22.0365, Florida Administrative Code, does not specify what type of disputes can be brought before the Commission. It does require that the companies involved in the dispute attempt to resolve their dispute themselves, and follow the dispute resolution terms of the ICA.

Staff believes parties to the ICA can bring any disagreement before the Commission either through the Expedited Dispute Resolution Process, or through a standard petition, as long as the Dispute Resolution provisions of the ICA have been followed. Based on staff's analysis, staff believes that AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that the ICA should permit a party to seek relief from the Commission for any disputes regarding the ICA, but only after the Dispute Resolution provisions of the ICA have been followed.

Issue 30i: Should the joint and several liability terms be reciprocal? (GT&C § 17.1)

Recommendation: No. Staff recommends that the joint and several liability terms should not be reciprocal. (Williams, Tan, Ames)

Position of the Parties

CA: Yes. CA has revised AT&T's proposed ICA language to provide parity between the parties. CA has also removed language which would illegally bind non-parties to this agreement, clarifying that each party is responsible to the other for the actions of any other party acting on its behalf.

AT&T Florida: No, because no entity other than AT&T Florida can possibly have ILEC obligations under the ICA.

Staff Analysis: This issue addresses whether the joint and several liability terms in GT&C 17.1 should apply to both parties. Joint and several liability is defined as liability that may be split up among parties for the entirety of the obligation.[25]

AT&T Florida proposes the following language:

> 17.1 In the event that **CLEC** consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party places orders under this Agreement using CLEC's company codes or identifiers, **all such entities shall be jointly and severally liable for CLEC's obligations under this Agreement.**

(EXH 2, p. 44)

CA proposes the following language:

> 17.1 In the event that **either party** consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party places orders under this Agreement using CLEC's company codes or identifiers, **the Party shall be solely liable to the other for obligations under this Agreement related to the actions of its affiliate, agent or designate. This Agreement does not provide for action against or recovery from any third party, except as otherwise provided herein.**

(EXH 2, p. 44)

[25] Black's Law Dictionary, 8th Ed. 2004.

Parties' Arguments

CA

CA argues that the joint and several liability terms should be reciprocal. CA's premise for its proposal is that parity is needed between the parties. (TR 52) CA also argues that a third party would not place orders in AT&T Florida's systems on CA's behalf if it would be held potentially liable for all of CA's obligations under this ICA. CA argues that "It is CA who is executing the ICA. It is CA who is required to have the requisite insurance coverages under this ICA. It is CA who is ultimately responsible for what it, or its agent, does." CA's position is that it is solely responsible for its actions and the actions of its agents. (CA BR 105)

CA argues that AT&T Florida's language is unlawful under basic common law contracting principles. CA believes the language purports to bind a third-party to the ICA to which the third-party has not agreed to be bound. (CA BR 106, TR 52)

CA also argues that AT&T Florida has failed to provide any substantive support for its position, and has proposed no language that would make its own affiliates jointly and severally liable under the ICA. As a result, CA contends that AT&T Florida's position should not be approved by the Commission. (CA BR 106)

AT&T Florida

AT&T Florida argues that the joint and several liability terms should not be reciprocal. AT&T Florida argues that the only entity that can be subject to this ICA as an ILEC is AT&T Florida. (AT&T Florida BR 94)

AT&T Florida further argues that AT&T Florida's CLEC affiliates cannot be subject to this ICA in the position of the ILEC. AT&T Florida's position is that the only way an AT&T Florida CLEC affiliate would be subject to this ICA is if it adopted CA's ICA pursuant to Section 252(i) of the Act. (AT&T Florida BR 94) In that event, AT&T Florida states that its CLEC affiliate would be subject to the same terms and conditions as CA. (TR 235)

AT&T Florida counters CA's argument that the premise for CA's position is to provide parity between the parties is not rational. (TR 52) Again, AT&T Florida argues that no entity other than AT&T Florida can take on ILEC responsibilities under the ICA. (AT&T Florida BR 94)

Analysis

Staff believes the ICA before the Commission is between AT&T Florida as the ILEC, and CA as the CLEC, and CA's possible affiliates. (TR 235) Staff is persuaded by AT&T Florida's argument that the only entity that can be subject to this ICA as an ILEC is AT&T Florida and that only AT&T Florida can have ILEC obligations in the context of this ICA. (TR 235, AT&T Florida BR 94) Staff is further persuaded that the application of reciprocity to both parties does not make sense due to the nature of the technical provisioning of the service and the requirements of Section 252 of the Act. Therefore, because no other entity can be subject to this ICA as an ILEC, staff recommends that the Commission find that there is no need for the joint and several liability terms to be reciprocal.

CA's argument that parity is needed between the parties is not persuasive. AT&T Florida has stated an AT&T Florida affiliate that is a CLEC could adopt this ICA and would then become subject to the same terms and conditions as CA. (AT&T Florida BR 94, TR 235) If staff's recommendation is approved, then any CLEC adopting this ICA, including AT&T Florida affiliates that are CLECs, would be held to the joint and several liability terms. Therefore, staff believes there is parity between the parties in the position of the CLEC. Based on staff's analysis, AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends the joint and several liability terms should not be reciprocal.

Issue 30ii: Can a third-party that places an order under this ICA using CA's company code or identifier be jointly and severally liable under the ICA? (GT&C § 17.1)

Recommendation: Yes. Staff recommends a third-party that places an order under this ICA using CA's company code or identifier should be jointly and severally liable under the ICA. (Williams, Tan, Ames)

Position of the Parties

CA: Resolved.

AT&T: Yes. If a third party places an order under the ICA using CA's company code or identifier, that third party should be jointly and severally liable for the order. CA should agree, since the third party's liability reduces CA's exposure.

Staff Analysis: This issue addresses whether a third-party that places an order under this ICA using CA's company code or identifier could be held jointly and severally liable under the ICA.

AT&T Florida proposes the following language:

> 17.1 In the event that **CLEC** consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third-party places orders under this Agreement using CLEC's company codes or identifiers, **all such entities shall be jointly and severally liable for CLEC's obligations under this Agreement.**

(EXH 2, p. 44)

CA proposes the following language:

> 17.1 In the event that **either party** consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party places orders under this Agreement using CLEC's company codes or identifiers, **the Party shall be solely liable to the other for obligations under this Agreement related to the actions of its affiliate, agent or designate. This Agreement does not provide for action against or recovery from any third-party, except as otherwise provided herein.**

(EXH 2, p. 44)

Parties Arguments

CA

No Position.

AT&T Florida

AT&T Florida argues that to the extent another entity, including a CA affiliate, operates on CA's behalf pursuant to the ICA, CA and such entity must be jointly and severally liable. AT&T

Florida contends this protects AT&T Florida from potential loss resulting from inappropriate conduct by and between CA and its affiliates/other entities. (TR 235)

AT&T Florida also asserts that the liability of a third-party that uses CA's company code or identifiers to place an order under the ICA would reduce CA's liability. (AT&T Florida BR 95) AT&T Florida believes the Commission should resolve the dispute in favor of AT&T Florida because it is reasonable for a third-party that places orders using CA's company code or identifiers to be jointly and severally liable for those specific orders.

Analysis

Staff is persuaded by AT&T Florida's argument that it is reasonable for a third-party that places an order under this ICA using CA's company code or identifier to be held jointly and severally liable under the ICA for those orders. (AT&T Florida BR 95, TR 235, 236) Furthermore, staff agrees that holding a third-party jointly and severally liable in this situation would reduce CA's liability. (AT&T Florida BR 95). Based on staff's analysis, AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends a third-party that places an order under this ICA using CA's company code or identifier should be jointly and severally liable under the ICA.

Issue 32: Shall the purchasing party be permitted to not pay taxes because of a failure by the providing party to include taxes on an invoice or to state a tax separately on such invoice? (GT&C § 37.1)

Recommendation: No. Staff recommends that the purchasing party should pay taxes regardless of whether the providing party includes taxes on an invoice or states a tax separately on such invoice. (Beard)

Position of the Parties

CA: Yes. Taxes must be billed as separate line items so CA may audit its invoices.

AT&T Florida: No. AT&T will show taxes as a separate line item on CA's bill whenever possible. In the unlikely event that a tax is omitted (e.g., a new tax not yet in AT&T's billing system), CA is still obligated to pay those taxes.

Staff Analysis: Issue 32 addresses whether CA should be permitted to not pay taxes that AT&T Florida fails to include on an invoice or to state/show separately on the invoice. AT&T Florida is seeking to add language to §37.1 of the ICA that would make clear that taxes will be included on invoices and shown as separate line items whenever possible. The ICA language would still make clear that CA is responsible for taxes owed for products and services under this agreement.

Parties' Arguments

CA

CA would like to be able to audit its invoices by having AT&T Florida separate taxes by line items. CA acknowledges that AT&T Florida already separates its taxes by line items but is codifying the current process. CA believes that if there is a billing dispute, it would be unable to dispute any improperly billed taxes if all taxes are not itemized. (TR 53)

CA believes AT&T Florida makes a false premise when AT&T Florida states, "[h]owever, it is possible that taxes could be omitted if, for example, there was a new local tax that applied to the services AT&T Florida provides to CA, but AT&T Florida's billing system had not yet been updated to reflect the new tax. In that case, the new tax would not be listed on CA's bill." (TR 236) Due to the fact that, according to CA, taxing authorities provide ample notice for billing system changes to be made before taxes become effective, this would not be a true statement. (CA BR 107)

AT&T Florida

AT&T Florida states that it would identify taxes as a separate item on its bills to CA whenever possible. AT&T Florida states it has no reason to purposely omit taxes from its bills. AT&T Florida states that this still should not excuse CA from paying legitimate taxes if they are not separately listed or based on the appearance of AT&T Florida's bills and the Commission should adopt AT&T Florida's language. (TR 236-237)

AT&T Florida generally agrees with CA and the language stating that taxes will be shown as a separate line item but adds the qualifier "whenever possible" in case of a situation where it was impossible for AT&T Florida to list taxes separately. (TR 300)

AT&T Florida does not have a process that proactively examines the taxes billed unless there is a billing dispute. If there is a billing dispute that requires an update to the billing system then it is referred for a correction order. (EXH 37, Bates No. 685)

Staff Analysis

Staff believes that CA is still responsible for all taxes due regardless of whether AT&T Florida has included each tax on an invoice and whether each tax is stated separately on those invoices. Staff concurs with AT&T Florida's proposed language in the ICA. AT&T Florida states that if there is a billing dispute that requires an update to the billing system, then it is referred for a correction order. This gives CA the opportunity to dispute any issues it believes have occurred on its bills. (EXH 37, Bates No. 685) Based on staff's analysis, staff believes that AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that the purchasing party should pay taxes regardless of whether the providing party includes taxes on an invoice or states a tax separately on such invoice.

Issue 33A: Should the purchasing party be excused from paying a Tax to the providing party that the purchasing party would otherwise be obligated to pay if the purchasing party pays the Tax directly to the Governmental Authority? (GT&C § 37.3 and § 37.4)

Recommendation: Yes, staff recommends that if the purchasing party has completed an Indemnification Agreement which holds AT&T Florida harmless from any tax, then the purchasing party should be excused from paying the tax to the providing party that the providing party would otherwise be obligated to pay. (Beard)

Position of the Parties

CA: Yes.

AT&T: The real question is whether, when CA resells AT&T's telecommunications services, AT&T should collect the taxes from CA and remit them to the taxing authority. AT&T should do so, because that is how it works with all resellers, and the parties have agrees on contract language to that effect.

Staff Analysis: Issue 33A addresses whether CA should be excused from paying a tax to AT&T Florida that CA would otherwise be obligated to pay if CA pays the tax directly to the Governmental Authority. CA would like language added to §37.3 and §37.4 of the ICA which would allow it to pay certain taxes itself, that are normally assessed and paid by AT&T Florida.

Federal, state, city, county and municipal governments require that taxes be collected on monies billed to end users every month. When CA purchases resale services[26] from AT&T Florida, AT&T Florida bills CA those taxes (and other applicable surcharges), and then remits those taxes (and any other applicable surcharges), to the appropriate authorities. CA, however, proposes to modify this process via an "exemption" and directly pay the governmental body the taxes for the end users it serves via the resale services purchased from AT&T Florida.

CA's proposed language for §37.3 and §37.4 uses the term "exemption" in a manner that departs from normal usage. (TR 420) In normal usage, an "exemption" is a statutory exclusion from a tax. (TR 420-421) In its proposed language, CA is not using the word in that sense. Rather, when CA's language says "exemption," it is referring to a situation where a tax applies (thus, no exemption in the usual sense), but where CA seeks to be excused from remitting to AT&T the tax amount that AT&T remitted to the government on the grounds that CA has paid the tax itself. (TR 421)

[26] Resale under Section 251 (c)(4) of the 1996 Act is an ILEC duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Resale services are AT&T Florida's retail telecommunications services that AT&T Florida sells to CA for resale to CA's end users. (TR 416)

Parties' Arguments

CA

CA believes that AT&T Florida should "exempt" it from paying taxes for which CA has already provided the documentation that it has paid or it pays taxes directly to the appropriate government authority. Also, CA states that it is aware of and has experience submitting a "tax exemption" form that AT&T Florida gives CLECs to fill out to avoid being billed for things such as 911, relay and similar taxes and fees. (EXH 46, Bates No. 1572)

- CA does not want AT&T Florida to pay and then show proof for the purpose of reimbursement. (TR 105)
- CA is concerned the way the current ICA language reads may cause a double-payment of a tax. (TR 105)
- CA has a concern regarding the 911 surcharge and the resale line count. (TR 105-106)
- CA states it cannot determine which taxes AT&T Florida has paid and to whom if AT&T Florida does not give CA the county designation for each resale line or an aggregate count of the number of lines and the 911 surcharges, per county, so CA can claim exemption. (TR 106)
- CA argues that exemptions for CA 911 obligations must be done by county and that the AT&T Florida proposed language assumes that CA is resale and not also facilities-based, which according to CA is contrary to the intent of the Act. (TR 106)

AT&T Florida:

AT&T Florida states that if CA pays a tax, fee, or surcharge directly to the government and is also billed by AT&T Florida for the same tax, fee or surcharge, it does not mean that CA is being double-billed. (EXH 36, Bates No. 578) AT&T asserts that the parties have agreed on ICA language for this issue and AT&T Florida feels that CA is trying to revise the language in the agreement. (TR 422)

Section 251(c)(4) of the Act requires an ILEC "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." (TR 416) Therein, resale services are those services that AT&T Florida sells to CA for resale to CA end user customers. (TR 416) AT&T Florida sells the services to CA at the retail price, less a discount. The discount in Florida is 21.83 percent for residential lines and 16.81 percent for business lines. (TR 416)

When CA purchases a resale service from AT&T Florida and resells it to an end user customer, that end user customer has a retail relationship with CA for the purposes of buying and paying for that service; however, the underlying network and call functions are being performed by AT&T Florida, and the CA resale customer is assigned a telephone number that belongs to

AT&T Florida.[27] As a result, calls to and from the CA resale customer appear on the network as if they terminated to–or originated from–an AT&T Florida end user customer. (TR 417) For example, transport and termination charges for calls originated by a CA resale customer are paid to the terminating carrier by AT&T Florida–rather than by the reseller–because those calls are originated on AT&T Florida's network and, from the point of the terminating carrier, appear as AT&T Florida originated calls. AT&T Florida, having paid the transport and termination charges to the terminating carrier, then bills those charges to CA. (TR 416-417)

According to AT&T Florida, everything pertaining to the treatment and billing of a resale line is the same as for a retail line, including the treatment of taxes and surcharges payable by the end user customer. AT&T Florida states that a resale line is operationally identical to an AT&T Florida retail line, and AT&T Florida handles all taxes and surcharges the same as it does for its own retail lines.

When AT&T Florida bills one of its retail customers, the bill includes all applicable taxes and fees, in addition to AT&T Florida's retail charges. AT&T Florida then pays the taxes and fees to the appropriate governmental authority. Therefore, with a resale line, AT&T Florida bills the CLEC reseller all applicable taxes and fees payable by the CLEC's customer and remits those taxes and fees to the appropriate governmental authority; the reseller recovers those taxes and fees from its customer. (TR 417) AT&T Florida witness McPhee states that all resellers in Florida comply without complaint, but CA is proposing to do things differently. (TR 417)

CA wants to remit the taxes to the governmental authority itself, rather than allowing AT&T Florida to collect and remit the taxes to the governmental authority. AT&T Florida believes that the proposed language of CA for §37.3 and §37.4 would be unreasonable even if it were to be consistent with language on which the parties have already agreed, because it would require AT&T Florida to revamp its billing system to accommodate CA alone. (TR 453)

Staff Analysis

AT&T Florida believes that the word "exemption," for purposes of addressing the application of taxes, means being released from, or not subject to, an obligation (to pay taxes) by the appropriate government authority. According to AT&T Florida, CA's proposed language is not using the word in that way. Rather, when CA's language says "exemption," it is referring to a situation where a tax applies (thus, no exemption in the usual sense), but where CA seeks to be excused from paying the tax amount (which AT&T Florida remitted to the government) to AT&T Florida. (TR 420-421)

If CA seeks a true tax exemption for one of its customers such as a governmental agency, CA would need to complete the necessary tax exemption forms for that customer, and submit them to AT&T Florida's Tax Exemption Group. (TR 418) AT&T Florida's website has the instructions and necessary forms available at its website, https:/clec.att.com/clec/shell.cfm?section=2544. (EXH 44, Bates Nos. 1512-1518, EXH 45, Bates Nos. 1514-1518) Once CA has completed this process, AT&T Florida would no longer assess tax charges on the exempt lines. While there is

[27] A number that is within a block of numbers (NPA-NXX) that AT&T Florida obtained from the numbering authority.

one Federal Excise Tax exemption form, there are multiple state tax exemption forms that may need to be completed and processed. (TR 418)

If CA wants to remit the taxes to the governmental authority itself, rather than allowing AT&T Florida to collect and remit the taxes to the governmental authority, CA would need to complete an Indemnification Agreement which holds AT&T Florida harmless from any tax, interest, penalties, loss, cost or expenses (including attorney fees) that may be incurred by AT&T Florida in connection with any claim asserted or actions taken by the respective governmental authority to assess or collect such tax from the providing Party. (EXH 48, Bates No. 1850)

CA wants to remit the taxes to the governmental authority itself, rather than allowing AT&T Florida to collect and remit the taxes to the governmental authority. To do this, CA would need to complete an Indemnification Agreement which holds AT&T Florida harmless from any Tax, interest, penalties, loss, cost or expenses (including attorney fees) that may be incurred by AT&T Florida in connection with any claim asserted or actions taken by the respective Governmental Authority to assess or collect such tax from the providing party. (EXH 48, Bates No. 1850) Neither party's proposed language reflects staff's recommended language, so parties should negotiate language in conformance with the Commission's vote if staff's recommendation is approved.

Conclusion

Staff recommends that if the purchasing party has completed an Indemnification Agreement which holds AT&T Florida harmless from any tax, then the purchasing party should be excused from paying the tax to the providing party that the providing party would otherwise be obligated to pay.

Issue 33B: If CA has both resale customers and facilities-based customers, should CA be required to use AT&T Florida as a clearinghouse for 911 surcharges with respect to resale lines? (E911 § 5.2.2)

Recommendation: No, Staff recommends that CA should not be required to use AT&T Florida as a clearinghouse for 911 surcharges with respect to resale, because CA has both resale and facilities-based customers. (Beard)

Position of the Parties

CA: No. Because CA will be a facilities-based AND a Resale CLEC, its systems will report its 911 subscriber data in the aggregate to the Florida 911 Board using the Board's monthly form separated by county, and CA will pay the surcharges based upon that data.

AT&T Florida: As with Issue 33A, CA should adhere to the same process as every other CLEC in Florida with respect to 911 surcharges on resale lines: Let AT&T pay the surcharge amounts to the governmental authority and pay AT&T's bill for those amounts. There is no risk of double-payment.

Staff Analysis: Issue 33B addresses whether CA should be required to use AT&T Florida as a clearinghouse for 911 surcharges when it has both resale and facilities-based customers. AT&T Florida argues that all other resellers use AT&T Florida as a clearinghouse and that CA should as well. CA would like to handle this aspect of monthly surcharges and taxes itself because it does have both resale and facilities-based lines.

Parties' Arguments

CA

CA will be a facilities-based and a reseller CLEC that will report its 911 subscriber data in the aggregate to the Florida 911 Board using the Board's monthly form separated by county. CA will pay the surcharges based upon that data. CA believes this provides no way for it to determine the county that each resale line AT&T Florida bills the E911 surcharge on its bill. Because of that, CA believes that it cannot deduct that resale line from its monthly filings and payments to the Florida 911 Board, which are county-specific. CA believes that AT&T Florida's language would require CA to double-pay for its E911 surcharge each month.

CA witness Ray was asked if he found it as strange as Mr. McPhee implies that CA wishes to aggregate tax burdens between facilities-based and resale customers. CA states that taxes other than 911 already work that way. Witness Ray also states that he had direct experience with both Verizon and CenturyLink that exempt CLECs from 911 taxes in the manner that CA has requested. CA was also asked if AT&T Florida was correct in its distinction between resale and facilities-based charges. CA said that AT&T Florida just states that resale and retail are handled the same way but glossed over the fact that CA says it is entitled to exemption from all other taxes with resale. Also, beyond Verizon and CenturyLink, CA says that all other ILECs in Florida provide the 911 exemption that CA is seeking. CA states that, "[t]his makes me wonder if AT&T Florida's proposed language treats CA differently than other CLECs in Florida." (TR 107)

AT&T Florida

Under the proposed AT&T Florida language, AT&T Florida would be able to collect the surcharge even though CA would not be entitled to collect it from its customers. The customer could be exempt or the line cap could have been reached and there could be more lines at a particular location than you can charge 911 for.

AT&T Florida defines “clearinghouse” as a repository for collecting and paying specific monies, such as bills, taxes, or fees. AT&T Florida will collect and remit 911 surcharges to the appropriate E911 authority or Public Safety Answering Position a/k/a Public Safety Answer Point (PSAP) on behalf of the end-users lines that are resold by CA. AT&T Florida states that the same 911 surcharge is assessed regardless of whether the end-user is served by a resold line or a facilities-based line. (EXH 36, Bates No. 579)

AT&T Florida asserts that the dispute is over which carrier should remit those surcharges and fees when AT&T Florida provides CA with resale services. AT&T Florida states it provides a complete product, including the billing of appropriate E911 surcharges. AT&T Florida states multiple times that it bills the same for retail and resale, with the exception of the resale discount.

Analysis

Staff agrees with CA that it should not be required to use AT&T Florida as a clearinghouse for 911 surcharges with respect to resale because CA has both resale and facilities-based customers. Staff does believe that CA should be required to provide proof of payment to AT&T Florida as well as the necessary PSAPs. Based on staff’s analysis, staff believes that CA’s proposed language is appropriate.

Conclusion

Staff recommends that CA should not be required to use AT&T Florida as a clearinghouse for 911 surcharges with respect to resale because CA has both resale and facilities-based customers.

Issue 34: Should CA be required to interconnect with AT&T Florida's E911 Selective Router? (E911 § 3.3.2)

Recommendation: Yes, Staff recommends that CA should be required to interconnect with AT&T Florida's E911 Selective Router where AT&T Florida is the primary provider. (Beard)

Position of the Parties

CA: No. There are ample competitors for CLECs and Voice over Internet Protocol (VoIP) companies to choose from in the 911 Emergency Services marketplace with at least four large competitors to AT&T for statewide 911 service in Florida. Maintaining trunks to AT&T selective routers is unreasonably costly, inefficient and unnecessary.

AT&T Florida: Yes. AT&T provides 911 service to certain PSAPs. All 911 calls to those PSAPs must be routed through AT&T. CA should be required to send those calls directly to AT&T, because routing the calls to AT&T through a 911 aggregator would introduce an additional, and unnecessary, point of failure.

Staff Analysis: E911 customers contract with a service provider to provide their E911 network services, and all other carriers connect to that 911 service provider for purposes of routing their 911 calls to the PSAP. AT&T Florida is the designated 911/E911 service provider for many E911 customers. Other E911 customers in Florida contract with different service providers, such as Intrado or CenturyLink. If CA has end user customers located in the E911 service areas served by one of those carriers, then CA would presumably obtain those E911 services from that carrier. (TR 428)

A carrier that provides E911 network services, such as AT&T Florida, typically provides a complete service platform. Three integrated components provide the routing and transmission of an E911 call. The first is a Selective Router (SR), which is a specialized switch used to route a 911 call to the proper PSAP based upon the number and location of the call. Second, the Automatic Location Identification (ALI or E911) database contains end user information, such as the caller's telephone number, the address/location of the telephone, and sometimes additional emergency services information that is automatically displayed at the PSAP during an emergency call. The third component is the network facilities used to connect the PSAP to the SR and to the ALI database. (TR 428-429)

AT&T Florida believes that CA wants to utilize an alternative provider for E911, which could potentially create a point of failure with the calls. (EXH 41 p. 1448) CA does not want to connect to AT&T Florida's E911 selective router and/or trunks, and would rather connect directly to one of the competitors. (EXH 41 p. 1446)

Parties' Arguments

CA

CA does not want to connect to AT&T Florida's E911 selective router and/or trunks, and would rather connect directly to one of the competitors. CA does not want to order and maintain 911 trunks if those trunks never pass any traffic and AT&T Florida states that CA will not have to. (EXH 41 p. 1446)

CA states there are ample competitors for CLECs and VoIP companies to choose from in the 911 Emergency Services marketplace and there are at least four large competitors to AT&T Florida for statewide 911 services in Florida. CA also states that the other competitors provide modern, superior features, and functionality compared with AT&T Florida's, "antiquated, decades-old 911 infrastructure" that has not noticeably changed or been significantly updated over the last decade. CA says that it objects to AT&T Florida's monopolistic position that it is entitled to be paid for its inferior 911 services even when CA does not need or intend to use those services. (TR 54)

CA states that AT&T Florida seems to be arguing that CA could send 911 traffic wherever it likes but must still maintain expensive 911 trunks to AT&T Florida anyway. (TR 107) CA argues that a middleman is being used whether the CLEC uses AT&T Florida or sends 911 calls directly to an alternate provider for completion. (TR 107)

AT&T Florida:

AT&T Florida believes the big issue is CA wanting to utilize an alternative provider for E911, which could potentially create a point of failure with the calls. (EXH 41 p. 1448) In addition, AT&T Florida is concerned about correct completion of the 911 call to the PSAP. AT&T Florida wants to be sure to have successful call testing of E911 routing prior to passing live traffic through. (EXH 41 p. 1448)

AT&T Florida states that if CA were to interconnect to AT&T Florida's E911 Selective Router and also exchange traffic in areas that AT&T Florida is not the E911 provider, then CA must also interconnect with the Selective Router of the E911 service provider for that area. (EXH 36 p. 580) AT&T Florida uses the example of the PSAPs that are located within the serving areas of CenturyLink. (EXH 36 p. 580) AT&T Florida states that if the PSAP was served by an Alternate Emergency Service Provider (AESP), like the counties of Levy, Martin, and St. Lucie, that are served by Intrado, then CA would also have to interconnect with the AESP's Selective Router. (EXH 36, p. 580)

Staff Analysis

It is possible for CA to use a third party aggregator to deliver its end user 911 calls to the appropriate PSAP. An aggregator for E911 traffic is a third-party middleman between CA's network and AT&T Florida's E911 tandem, which adds an additional layer of complexity to an E911 call destined to a PSAP. (TR 430) However, every time another carrier is introduced into a call sequence, another point of potential failure is introduced as well. The danger is that calls might be delivered to the wrong PSAP or without the caller's location, which could delay the dispatch of emergency assistance. Additionally, there are no mechanisms by which to ensure that third party 911 aggregators (*e.g.*, Intrado) have sufficient trunking capacity. Insufficient trunking capacity could result in call blockage (*i.e.*, in 911 calls failing to complete). Finally, 911 aggregation increases the risk of call blockage due to a trunking maintenance problem of the trunking provider and/or intermediate carriers that switch and/or transport the 911 traffic for eventual connection to AT&T Florida's selective router and the responsible PSAP. (TR 430-431) While it is possible to mitigate the risks of 911 call aggregation, if an aggregator mixes different types of traffic on the same trunk group *e.g.*, wireless, VoIP, and traditional landline, any default routing requested by the PSAP could be negated, resulting in misrouted 911 calls. In addition, call aggregation increases the difficulty of tracing a call to the originator in an emergency situation when call data is not available and/or not correct in the E911 database.

Staff agrees with AT&T Florida, that successful call testing of E911 routing should be done prior to passing live traffic through. (EXH 41, p. 1448) Additionally, staff agrees that each time another carrier is introduced into the call sequence, the potential of a failed call happens. (TR 430; AT&T Florida BR 109) That is not in the best interest of any end user and creates undue risk.

PSAPs contract with a service provider to provide their E911 network services, and all other carriers connect to that 911 service provider for purposes of routing their 911 calls to the public-safety answering point. AT&T Florida is the designated 911/E911 service provider for many PSAPs in Florida. Staff believes that the introduction of a third party aggregator to the 911 call sequence is not in the public interest. Based on staff's analysis, staff believes that AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that CA should be required to interconnect with AT&T Florida's E911 Selective Router where AT&T Florida is the primary provider.

Issue 35: Should the definition of "Entrance Facilities" exclude interconnection arrangements where the POI is within an AT&T Florida serving wire center and CA provides its own transport on its side of that POI? (Net. Int. § 2.9)

Recommendation: Yes. The definition of “Entrance Facilities” should exclude interconnection arrangements where the POI is within an AT&T Florida serving wire center and CA provides its own transport on its side of that POI. (Curry)

Position of the Parties

CA: CA believes that as the party that initially paid for facilities which connect its collocation in an AT&T CO to AT&T’s Main Distribution Frame, and AT&T incurred no costs for them, AT&T has no right to charge CA for the use of those (or any) facilities for local interconnection.

AT&T Florida: No. The parties’ agreed language appropriately defines Entrance Facilities. CA’s additional language is a clumsy attempt to inappropriately expand the definition to include intra-building facilities and then argue that CA should not have to pay for them–even though CA has elsewhere agreed to pay for intra-building facilities.

Staff Analysis: This issue asks the Commission to determine if the definition of Entrance Facilities should exclude interconnection arrangements where the POI is within AT&T Florida’s CO. Entrance Facilities are the transmission facilities (typically wires or cables) that connect the CLEC’s network with the ILEC’s network for the mutual exchange of traffic. (EXH 2, p. 68) Entrance Facilities typically extend outside of the CO. (TR 302) However, this dispute essentially hinges on whether AT&T Florida should be able to charge CA for “intra-building facilities,” located within AT&T Florida’s CO, that connect CA’s collocation space with the POI.

Parties Arguments

CA

The parties have agreed to AT&T Florida’s proposed language in Network Interconnection (Net. Int.) § 2.9 which defines “Entrance Facilities.” (EXH 2, p. 68) However, CA argues that AT&T Florida’s definition of Entrance Facilities implies that AT&T Florida can charge for Entrance Facilities regardless of where the POI is located. According to CA, Entrance Facilities should only apply if CA requests AT&T Florida to provide transport for interconnection trunks from AT&T Florida’s CO to another location. CA argues that AT&T Florida should not charge for Entrance Facilities in cases where the POI is within an AT&T Florida CO building and CA extends its network to meet AT&T Florida at the POI. (TR 55) Therefore, CA has proposed to include additional language in Network Interconnection § 2.9 that explicitly excludes from the definition of Entrance Facilities arrangements where the POI is within an AT&T Florida serving wire center and CA provides its own transport on its side of the POI.[28]

CA asserts that the POI is the ILEC’s CO building and not a specific location within the building. Hence, collocation within the CO is “at the point of interconnection.” (EXH 7, p. 307; EXH 26, Bates No. 10; TR 108) CA argues that its assertions are also supported by industry

[28] The CO is sometimes referred to as a wire center.

standards. Historically the industry, including AT&T Florida, has considered the ILEC's CO building itself to be the POI and "on the ILEC's network." (EXH 27, Bates No. 52) Therefore, a collocation within the CO was considered at the POI. (TR 108)

However, CA claims that in recent years AT&T Florida has deviated from the industry's standard by adopting the position that neither the CO building nor CA's collocation space within the building is the POI because they are not located on AT&T Florida's network. Instead, CA argues that AT&T Florida has designated specific areas, in which a CLEC is not permitted to establish collocation, within its CO as points on its network. Once the CLEC collocates inside of the CO building, AT&T Florida then charges the CLEC for the intra-building facilities to connect the CLEC's collocation to the POI. (CA BR 133)

According to CA, AT&T Florida has referred to these intra-building facilities as "Entrance Facilities." (EXH 46, Bates No. 1581) CA argues that because the collocation is also the POI, if CA collocates inside of AT&T Florida's CO building, and provides the interconnection circuits to do so, CA has met its burden to "meet at the POI." Therefore, CA should not be charged for the intra-building facilities that connect the collocation space to some other room within AT&T Florida's CO building that AT&T Florida considers on its network or the POI. (TR 109; CA BR 133)

Further, CA argues that the intra-building facilities that connect the collocation space to AT&T Florida's main distribution frame/ POI are paid for by CA because they are a part of CA's cost to collocate. CA attests that by charging CA a monthly fee for these intra-building facilities, AT&T Florida is double billing CA. (EXH 46, Bates No. 1581) Therefore, CA's proposed language seeks to clarify that if CA collocates within AT&T Florida's CO building that AT&T Florida will not charge CA for the intra-building facilities/Entrance Facilities that connect CA's collocation to the POI.

AT&T Florida

The parties' agreed upon language is the appropriate definition of Entrance Facilities. AT&T Florida argues that CA's proposed language contradicts the agreed upon language and could possibly lead to future disputes. CA's additional proposed language also attempts to expand the definition of Entrance Facilities to include the intra-building facilities between CA's collocation and the POI. AT&T Florida further argues that CA appears to misunderstand what Entrance Facilities are and the options that CA has to interconnect. (TR 238)

AT&T Florida argues that the agreed upon definition of Entrance Facilities does not imply that AT&T Florida could charge for Entrance Facilities regardless of where the POI is located. The definition does not indicate when AT&T Florida would or would not charge for Entrance Facilities; it merely defines the term. According to AT&T Florida, the terms and conditions for CA's interconnection with AT&T Florida using Entrance Facilities are appropriately set forth in Network Interconnection § 3.3.2, and the associated rates are listed in the Pricing Sheets. (TR 301; EXH 2, p. 71)

AT&T Florida also argues that the agreed upon language in Network Interconnection § 3.3 provides CA with three methods of interconnection, collocation, leased Entrance Facilities, or fiber meet point. (TR 237; EXH 2, p. 71) AT&T Florida does not charge for Entrance Facilities when the CLEC chooses to collocate. Entrance Facilities would be provided (and AT&T Florida would bill) only when the POI is within an AT&T Florida CO and CA does not elect to collocate in that office. Entrance Facilities would not be provided (and AT&T Florida would not bill) when CA collocates transport terminating equipment or leases facilities from another carrier or self-provisions. (TR 240) Therefore, if CA elects to interconnect with AT&T Florida via collocation (Net. Int. § 3.3.1) and does not lease Entrance Facilities (§ 3.3.2), AT&T Florida would not charge CA for Entrance Facilities. (TR 301; EXH 2, p. 71)

AT&T Florida maintains that the parties agree that CA bears the responsibility for all transport facilities on its side of the POI, regardless of whether CA self-provides the facilities, leases facilities from another carrier, or leases facilities from AT&T Florida. However, AT&T Florida argues in the context of that responsibility, CA's proposed additional language stating that "Entrance Facilities do not apply" when CA "provides its own transport" is confusing and could be interpreted to include when CA leases facilities from AT&T Florida. Further, CA's proposed language contradicts other provisions within the ICA. (TR 241)

AT&T Florida argues that based on witness Ray's testimony and CA's responses to staff's discovery requests, it is apparent that CA does not want to be charged for any facilities inside of AT&T Florida's CO. This position is unrelated to Entrance Facilities because Entrance Facilities always extend outside of the CO and are always on the CLEC's side of the POI. (TR 302; TR 389) However, CA's proposed language aims to broaden the definition of Entrance Facilities to include these intra-building facilities. (TR 238)

Further, AT&T Florida argues that neither the CO building nor CA's collocation space within the building is the POI because they are not located on AT&T Florida's network. CA's collocation space is on CA's network. (TR 491; AT&T Florida BR 121) The parties have agreed to language in Net. Int. § 2.26 that the POI is a point on AT&T Florida's network, which may be at an end office or tandem building. (TR 239; EXH 2, p. 69) However, this does not mean that the building itself is a technically feasible point of interconnection–it is a building that houses a part of the network, not a point on AT&T Florida's network. (TR 491)

Rather, the POI would be at a physical piece of AT&T Florida's equipment within the building to which both parties connect their respective facilities, such as at a cross-connect point on a distribution frame.[29] The parties have also agreed in Net. Int. § 3.3.1 that when CA collocates for the purpose of interconnection CA is responsible for the facilities to connect from the collocation space to the demarcation point designated by AT&T Florida. (AT&T Florida BR 121; EXH 2, p. 71) Therefore, CA is responsible for providing the facilities to connect with AT&T Florida's network at the POI, even when CA is collocated within the same building where it has established the POI. (TR 239)

[29] See Figure 1: Typical Collocation Interconnection presented in witness Nienast Direct Testimony. This diagram illustrates how CA and AT&T Florida would physically collocate at an AT&T Florida CO building. (TR 490)

Analysis

The parties have agreed to the following definition of Entrance Facilities as proposed by AT&T Florida in Network Interconnection § 2.9:

> "Entrance Facilities" are the transmission facilities (typically wires or cables) that connect CLEC's network with AT&T-21STATE's network for the mutual exchange of traffic. These Entrance Facilities connect CLEC's network from CLEC's Switch or point of presence (POP) within the Local Access Transport Area (LATA) [30] to the AT&T-21STATE Serving Wire Center of such Switch or POP for the transmission of telephone exchange service and/or exchange access service.

However, CA has proposed to add the following language:

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

CA has indicated that its additional proposed language is meant to clarify that AT&T Florida will not charge CA for Entrance Facilities when CA collocates within an AT&T Florida CO building. However, based on the agreed upon language in the ICA, if CA chooses to collocate within an AT&T Florida CO, Entrance Facilities would not be applicable. Therefore, CA would not be charged for Entrance Facilities.

It appears that the "Entrance Facilities" that CA is referring to in this issue are actually intra-building facilities (which are totally unrelated to actual Entrance Facilities) that connect CA's collocation space within AT&T Florida's CO with the POI. Since Entrance Facilities always extend "outside" of the CO, by definition these intra-building facilities are not Entrance Facilities. (TR 302) In his deposition, witness Ray defined Entrance Facilities as a transport mechanism that AT&T Florida is required to provide to a CLEC in order to connect the two parties' networks on the CLEC's side of an AT&T Florida's CO. (EXH 46, Bates No. 1579) Witness Ray's definition of Entrance Facilities is essentially the same as the parties agreed upon language in Net. Int. § 2.9.

Although CA often referred to the intra-building facilities that connect CA's collocation with the POI within AT&T Florida's CO as Entrance Facilities, witness Ray later testifies in his deposition that these intra-building facilities are in fact not Entrance Facilities. (EXH 46, Bates Nos. 1579-1580) However, CA still believes that a collocation within an AT&T Florida's CO is at the point of interconnection. (TR 108) Therefore, CA should not be charged for intra-building facilities when it collocates inside of AT&T Florida's CO and CA extends its network to meet AT&T Florida at the POI. (TR 55)

[30] The LATA (local access and transport area) is a term used to describe the geographic region or service area where a local exchange carrier provides service.

Staff notes that CA's arguments regarding collocation being at the point of interconnection is not the subject of this issue and will be addressed in Issue 38. This issue asks the Commission to determine if the definition of "Entrance Facilities" should exclude interconnection arrangements where the POI is within AT&T Florida's serving wire center and CA provides its own transport on its side of the POI. Based on staff's review of the parties' arguments, staff believes that the definition of Entrance Facilities should exclude interconnection arrangements where the POI is within AT&T Florida's serving wire center and CA provides its own transport on its side of the POI.

Staff agrees with AT&T Florida's assessment that CA's additional proposed language attempts to expand the definition of Entrance Facilities, which are always on the CLEC's side of the POI, to include the intra-building facilities between CA's collocation and the POI. (TR 389) CA has even acknowledged that CA's main issue is that it does not believe that CA should have to pay AT&T Florida a monthly recurring charge for intra-building facilities used for local interconnection. (CA BR 125) However, CA has admitted that these intra-building facilities are in fact not Entrance Facilities. (EXH 46, Bates Nos. 1579- 1580)

Further, Entrance Facilities are only provided and billed for when the POI is within an AT&T Florida CO and CA does not elect to collocate in that office. Entrance Facilities would not be provided nor would CA be billed for Entrance Facilities when CA collocates transport terminating equipment. (TR 240) When CA elects to use collocation as its method of interconnection (Net. Int. § 3.3.1), the parties have agreed to language stating that CA is responsible for the facilities to connect from the collocation space to the demarcation point designated by AT&T Florida. (TR 240, EXH 2, p.71)

Staff believes that agreed upon ICA language proposed by AT&T Florida is the appropriate definition of Entrance Facilities.

Conclusion

Staff recommends the definition of "Entrance Facilities" should exclude interconnection arrangements where the POI is within an AT&T Florida serving wire center and CA provides its own transport on its side of that POI.

Issue 36: Should the network interconnection architecture plan section of the ICA provide that CA may lease TELRIC-priced facilities to link one POI to another? (Net. Int. § 3.2.4.6)

Recommendation: No. The network interconnection architecture plan section of the ICA should not provide that CA may lease TELRIC-priced facilities to link one POI to another. (Curry)

Position of the Parties

CA: Yes. If CA has an existing POI at an AT&T Tandem and AT&T requires CA to establish a new, secondary POI at another location due to excessive local interconnection traffic, CA should be entitled to lease AT&T dedicated interoffice transport between POIs at TELRIC prices.

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

Staff Analysis: This dispute centers on whether it is appropriate to include language that addresses methods of interconnection and pricing in the network interconnection architecture plan section of the ICA. CA argues that language is needed to clarify that CA may purchase dedicated interoffice transports for local interconnection at TELRIC rates when AT&T Florida requires CA to establish an additional POI due to excessive transit traffic. (EXH 28, Bates No. 77; TR 56) AT&T Florida's position is that CA's additional language should be rejected because the network interconnection architecture plan section is not the appropriate place to address specific interconnection methods and pricing. Provisions for these issues are appropriately set forth in other sections of the ICA. (TR 241-242, AT&T Florida BR 125)

Parties' Arguments

CA

CA has agreed to AT&T Florida's proposed language requiring CA to establish a second POI due to excessive traffic. However, CA argues that AT&T Florida is the only ILEC that has language in its ICA that requires a CLEC to do so. Other ILECs only require a CLEC to establish one POI per Local Access and Transport Area or LATA.[31] (EXH 46, Bates Nos. 1587-1588) Further, CA argues that AT&T Florida's provision requiring CA to establish a secondary POI is inconsistent with the FCC's single-point-of interconnection requirement. (CA BR 127)

CA attests that although it has agreed to establish additional POIs under certain circumstances CA only agrees to AT&T Florida's proposal as a "matter of negotiation." (EXH 46, Bates Nos. 1587-1588) CA is willing to establish additional POIs, although no other ILEC requires a CLEC to do so, but CA wants to make sure that it will be entitled to purchase transport facilities at TELRIC rates. (EXH 46, Bates No. 1587)

[31] The LATA (local access and transport area) is a term used to describe the geographic region or service area where a local exchange carrier provides service.

Therefore, CA's proposed language seeks to clarify that if AT&T Florida requires CA to establish a secondary POI for local interconnection, CA will be entitled to lease the facilities, specifically dedicated interoffice transport, that connect the new POI with the original POI at TELRIC Entrance Facility rates. (EXH 28, Bates No. 77; TR 56) CA argues that its proposed language is necessary to ensure that AT&T Florida does not require CA to establish additional POIs then attempt to charge CA special access rates, which are much higher than TELRIC rates, for the facilities connecting the POIs. (EXH 28, Bates No. 77)

Further, CA argues that the network interconnection architecture plan section of the ICA is the appropriate section to include CA's proposed language. CA's language is directly relevant to local interconnection trunks that are connecting CA's initial POI to a second POI required by AT&T Florida under the language in Network Interconnection §3.2.4.6. (EXH 46, Bates No. 1588; EXH 2, p. 70) However, CA believes that since the parties cannot agree upon the terms for TELRIC-based transport to the secondary POI, the Commission should strike both parties' language so that CA would not be required to establish a secondary POI. In turn, AT&T Florida would have no specific obligation to provide transport facilities at TELRIC rates if CA elected to establish a secondary POI on its own. (CA BR 127)

AT&T Florida

AT&T Florida objects to CA's proposed language which sets forth options for interconnecting at an additional POI in Network Interconnection § 3.2.4.6. (EXH 5, p. 70) AT&T Florida argues that CA's proposed language should not be included in the network interconnection architecture plan because the language is unnecessary and introduces an ambiguity that could lead to future disputes. AT&T Florida asserts that the purpose of the network interconnection architecture plan section (Net. Int. § 3.2) is to set forth the overarching terms and conditions regarding how the parties will interconnect. It generally describes AT&T Florida's network and provides that the parties will agree to and document a physical architecture plan for each area and states how the parties will handle changes to the plan (Section 3.2.1 and Section 3.2.5, respectively). (TR 241-242, AT&T Florida BR 125; EXH 2, pp. 70-71)

Further, the network interconnection architecture plan describes the parties' respective physical and financial responsibilities associated with the interconnection arrangement CA selects (Sections 3.2.2 and 3.2.6), as well as how foreign exchange services will be handled (Section 3.2.3). Section 3.2.4 of the network interconnection architecture plan provides the terms for establishing one or more POIs in a LATA while Section 3.2.7 sets forth the technical interfaces that the parties will use. (TR 241-242, AT&T Florida BR 125; EXH 2, pp. 70-71)

AT&T Florida argues that the network interconnection architecture plan does not include specific methods of interconnection or the pricing options (as proposed by CA) that are available to the CLEC. Interconnection methods, to which the parties have agreed to, are set forth in Network Interconnection § 3.3. Pricing is listed in the Pricing Sheets and/or relevant tariffs. (TR 241-242, AT&T Florida BR 125; EXH 2, p. 72) AT&T Florida argues that CA's proposed language includes provisions that include specific interconnection methods and pricing, that are appropriately included else where in the ICA, and therefore should not be included in the network interconnection architecture plan section.

AT&T Florida also argues that it is unclear as to what CA meant in its proposed language by the "Dedicated Transport-Interoffice Channel" CA may lease to establish an additional POI. (TR 244) A dedicated transport-interoffice channel is available as an unbundled network element (UNE) pursuant to Section 251(c)(3) and it is also a separate rate element for the purpose of interconnection pursuant to Section 251(c)(2). However, CA's proposed language does not recognize this distinction. (TR 244) Because CA's proposed language does not recognize that the distinction and the availability and use criteria for UNEs and interconnection are different, AT&T Florida believes that CA's proposed language could lead to future disputes. (TR 244)

Further, AT&T Florida argues that based on CA's proposed language and position statement, it appears that CA is confusing local interconnection with UNE. AT&T Florida will provide CA both UNEs and local interconnection at cost-based prices (i.e., based on TELRIC), but the criteria regarding availability and use are different for each. CA may use a UNE for any purpose (except for the sole provision of information services or to provide service to itself) including interconnection. However, UNE dedicated transport is only available when the requested route is impaired. For instance, if CA ordered UNE DS l transport between two AT&T Florida offices on a route that was not impaired, AT&T Florida would deny that request even if CA intended to use it for local interconnection. (EXH 36, Bates Nos. 582-583)

In contrast, while there is no impairment test for availability of local interconnection facilities, there are strict criteria regarding their use which are listed in Network Interconnection Sections 3.3.3.2 and 3.3.2.3. (EXH 2, p. 72) For example, CA would not be entitled to local interconnection DS1 transport to carry both local interconnection and backhaul traffic, because backhaul traffic is not eligible for carriage on TELRIC-priced facilities. The parties have also agreed to language in Network Interconnection § 3.3.2, and its subsections, that provides the relevant terms and conditions pursuant to which CA may lease TELRIC-priced Entrance Facilities for the sole purpose of local interconnection. Those terms apply when CA establishes additional POIs. (EXH 36, Bates Nos. 582-583; EXH 2, p. 71-72)

Analysis

Staff agrees with AT&T Florida that the network interconnection architecture plan section should not include CA's proposed language. The network interconnection architecture plan is not the appropriate section to address CA leasing facilities from AT&T Florida. This section should generally lay out the terms and conditions in respect to how CA and AT&T Florida will interconnect and describe AT&T Florida's network. This section should not include specific methods of interconnection and pricing options. (TR 241-242, AT&T Florida BR 125)

The parties have agreed that when CA has a single POI (or multiple POIs) in a LATA, CA will establish an additional POI at an AT&T Florida Tandem Servicing Area, separate from the existing POI arrangement, when there is excessive traffic through the existing POI to that AT&T Florida Tandem Servicing Area. The agreed upon language is located in the network interconnection architecture plan section of the ICA, specifically Network Interconnection Sections 3.2.4.5, 3.2.4.5.1, and 3.2.4.52. (EXH 2, p. 70) If additional POIs are required, CA should establish the POIs according to the agreed upon provisions listed in the applicable sections of the parties' ICA. In regards to pricing, AT&T Florida will provide CA both UNEs and local interconnection at TELRIC rates when applicable. (EXH 36, Bates Nos. 582-583)

Further, staff disagrees with CA’s argument that the Commission should strike both parties’ language since the parties cannot agree upon the terms for TELRIC-based transport to the secondary POI. The parties have already agreed to language in Network Interconnection § 3.3.2 and its subsections that provides the terms and conditions pursuant to which CA may lease TELRIC-priced Entrance Facilities (which are applicable) when establishing additional POIs. (EXH 36, Bates No. 583; EXH 2, p. 71) Since the parties have already agreed to language that provides the terms and conditions pursuant to which CA may lease TELRIC-priced facilities when establishing additional POIs CA’s proposed language is unnecessary. Therefore, staff believes that the network interconnection architecture plan section of the ICA should not provide that CA may lease TELRIC-priced facilities to link one POI to another.

Conclusion

Staff recommends the network interconnection architecture plan section of the ICA should not provide that CA may lease TELRIC-priced facilities to link one POI to another.

Issue 37: Should CA be solely responsible for the facilities that carry CA's OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups? (Net. Int. § 3.2.6)

Recommendation: Yes. CA should be solely responsible for the facilities that carry CA's OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups. (Curry)

Position of the Parties

CA: No. CA believes that it is well established that each party is responsible only for facilities and costs on its side of the POI for local interconnection, which includes 911, choke trunks, and meet point trunks.

AT&T Florida: Yes. Because OS/DA, E911, Mass Calling and Third Party Trunk Groups are used for ancillary services for the benefit of CA's customers, and not for the mutual exchange of traffic between the parties, CA should be solely responsible for the facilities that carry those trunk groups.

Staff Analysis: The parties both agree that CA is solely responsible for the cost of the facilities that carry the OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups on CA's side of the point of interconnection. However, this issue does not limit each party's responsibility to its own side of the POI, but asks whether CA should be responsible for the entire facility. (EXH 26, Bates No. 12; TR 245)

Parties' Arguments

CA

CA does not dispute that it is responsible for the cost of the facilities that carry CA's OS/DA, E911, Mass Calling (also referred to as high volume call-in (HVCI) or choke trunks), Third Party and Meet Point trunk groups. (EXH 26, Bates No. 12) However, CA believes that, if it elects to order these facilities, it is only responsible for the facilities on CA's side of the POI. CA objects to AT&T Florida's proposed language because it believes that E911 is not an ancillary service. Instead it is a component of local interconnection. CA also believes that since HVCI trunks are also characterized as ancillary services, which imply that the trunks are optional, CA should not be required to order and pay AT&T Florida for HVCI trunks. Further, CA argues that it does not need high volume call-in trunks because they are antiquated and unnecessary in today's telecommunications environment. (EXH 28, Bates No. 78; EXH 26, Bates No. 14)

CA asserts that it only intends to use E911 trunks. The company plans to connect facilities for the trunks directly at the POI for local interconnection. (EXH 27, Bates No. 51) CA acknowledges that CLECs do order 911 trunks to connect to AT&T Florida's Selective Router, which is located on AT&T Florida's side of the POI.[32] (EXH 26, Bates No. 12) However, since 911 trunks are generally accepted to be included as components of local interconnection and the financial responsibility for local interconnection is divided at the POI, CA argues that it should

[32] E911 section 2.13 of the parties ICA defines AT&T Florida's selective router as "the equipment used to route a call to 911 to the proper PSAP based upon the number and location of the caller." It is a switch specially equipped to handle the proper routing of E911 calls. (TR 247; EXH 2, p. 141))

not be responsible for paying for 911 trunks on AT&T Florida's side of the POI. (EXH 26, Bates No. 12; EXH 27, Bates No. 51)

Further, CA argues that AT&T Florida's proposed language attempts to double bill CA for 911 trunks. In Florida, the county emergency management entities that manage each 911 system pay AT&T Florida for the 911 trunks that the CLECs order to connect to AT&T Florida's Selective Router. CA argues that since the county emergency management already pays AT&T Florida for the 911 trunks on AT&T Florida's side of the POI, CA should not be financially responsible for the trunks. (EXH 26, Bates No. 12)

CA acknowledges that the parties' agreed upon language in Network Interconnection § 4.1.2 of the ICA lists OS/DA, E911, and the high-volume call-in trunk groups as ancillary services. (EXH 2, p. 74) However, CA argues that the language specifically states that the trunk groups "can" be established between the CLEC's switch and the appropriate AT&T Florida switch as further provided. The language does not specify that the CLEC "must" establish the trunk groups. Therefore, CA contends that it did not object to the language characterizing the trunk groups as ancillary because the language indicates that establishing the trunk groups is optional and would only apply if the CLEC elected to order the trunks. (EXH 46, Bates No. 1590-1591)

CA argues that although it did not raise an issue regarding the classification of the 911 and HVCI trunk groups as ancillary services when it agreed to the language in Network Interconnection § 4.1.2., CA did raise the issue later that it believes that 911 is a part of local interconnection. (EXH 46, Bates No. 1590) CA argues that the AT&T Florida's proposed ICA language poses some disparities, particularly because Network Interconnection § 4.1.2. characterizes HVCI trunks as ancillary services, which are optional. However, CA asserts that elsewhere in the ICA AT&T Florida attempts to require CA to order and purchase these trunks. (EXH 46, Bates Nos. 1590-1591)

CA also argues that AT&T Florida's assertion that OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups are not used for the mutual exchange of traffic is "on its face" false. (EXH 46, Bates No. 1951) The mass calling trunks that AT&T Florida seeks to require CA to order are specifically designed for the parties to exchange traffic. CA contends that if mass calling trunks were only solely used to benefit CA's customers then AT&T Florida would not be attempting to require CA to order these trunks.

In regards to E911 trunks, E911 is a component of emergency services where CA would have to send E911 calls to AT&T Florida's Selective Router. Therefore, from this perspective CA agrees that 911 trunks are not used for the mutual exchange of traffic because it would be a one-way trunk. (EXH 46, Bates No. 1591-1592) Further, CA attests that it would not object to AT&T Florida's proposed language if AT&T Florida would revise the language to properly classify 911 facilities as local interconnection and not require CA to purchase mass calling trunks. (EXH 28, Bates No. 78)

AT&T Florida

AT&T Florida argues that CA should be solely responsible for the facilities that carry OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups because these facilities are used by CA for the sole benefit of CA's customers and not for the mutual exchange of traffic with AT&T

Florida. (TR 245) In 47 C.F.R § 51.5, the FCC has defined interconnection as "the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic." (TR 246) With the use of OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups, there is no mutual exchange of traffic. AT&T Florida argues that these trunk groups carry ancillary services, as identified in the agreed upon language in the Network Interconnection § 4.1.2, which are separate and apart from local interconnection trunks (Network Interconnection § 4.3.1 and 4.3.3). (TR 246; EXH 2, pp. 74-75) With ancillary services, unlike with local interconnection, the POI is not the demarcation point between the parties' network. (TR 246) Therefore, the financial responsibility for these trunks groups is not divided at the POI.

Further, AT&T Florida argues that the parties have agreed to language in the ICA in Attachment 6, Customer Information Services (CIS) Sections 3.3.2 and 3.3.3 that makes it clear that the demarcation point for OS/DA need not coincide with the POI and identifies the AT&T Florida OS/DA switch as the demarcation point, not the POI. Also, CIS § 3.3.4 delegates the financial responsibility for the transport facilities to the CLEC. (EXH 36, Bates No. 584; EXH 2, p. 151) AT&T Florida argues that these provisions make it clear that the POI (which is the demarcation point for local interconnection facilities) is irrelevant when considering financial responsibility for the facilities that carry CA's OS/DA traffic. (TR 246)

In regards to 911, AT&T Florida argues that its proposed language makes it clear that CA is responsible for the cost of the "facilities" that carry 911 traffic. The language does not mention anything regarding the 911 "trunks." CA has objected to paying for 911 trunks because the public safety agencies pay AT&T Florida for these trunks. However, AT&T Florida argues that it is not proposing to charge CA for 911 trunks. The issue is about the facilities over which the trunks ride. The public safety agencies do not pay AT&T Florida for the 911 facilities between CA and AT&T Florida's Selective Router. (TR 247)

AT&T Florida argues that the parties have both agreed to language in the ICA in Attachment 5, E911, Section 4.2.1 that CA is financially responsible for the transport facilities to each AT&T Florida E911 Selective Router in the areas in which CA is authorized to provide service. Further, the agreed upon language in Attachment 5, E911, Section 4.2.5 states that CA is responsible for maintaining the facility transport capacity sufficient to route 911 traffic over trunks dedicated to 911 interconnection between the CA switch and AT&T Florida's E911 selective router. (EXH 2, p. 143; TR 247) The selective router is a switch that is equipped to route a 911 call to the proper PSAP based upon the number and location of the caller. The selective router is not the POI. However, AT&T Florida asserts that CA is still financially responsible for the transport facilities to each AT&T Florida Selective Router in each area in which CA is authorized to provide telephone exchange service. Therefore, CA's proposed language indicating that it would only be responsible for the facilities on its side of the POI directly conflicts with the agreed upon language in the E911 Attachment. (TR 247)

AT&T Florida argues that CA has also agreed to language in the ICA that designates CA as the party solely responsible for all recurring and nonrecurring charges associated with Third Party Traffic trunks and facilities.[33] Therefore, AT&T Florida is not financially responsible (nor should it be) for any costs associated with third party traffic. (TR 248) In regards to CA's

[33] Network Interconnection section 4.3.6. (EXH 2, p. 76)

arguments that it should not be required to order and purchase mass calling trunks, AT&T Florida's proposed language requiring HVCI trunks is the subject of Issue 40. AT&T Florida contends that to the extent that AT&T Florida prevails on Issue 40 and CA establishes HVCI trunk groups, it is appropriate for CA to be solely responsible for the facilities that carry its HVCI traffic to the designated HVCI access tandem in each serving area.[34] (TR 247; EXH 2, pp. 77-78)

Analysis

Based on staff's analysis, staff believes that CA should be solely responsible for the facilities that carry CA's OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups. The parties both agree that CA is solely responsible for the cost of the facilities that carry the OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups on CA's side of the point of interconnection. (EXH 26, Bates No. 12; TR 245) However, this dispute was mainly about whether CA is responsible for the facilities when they extend beyond CA's side of the POI.

CA has objected to paying for 911 trunks because the public safety agencies pay AT&T Florida for the trunks. AT&T Florida acknowledged that the county public safety agencies do pay AT&T Florida for the 911 trunks. However, AT&T Florida argues that the public safety agencies do not pay AT&T Florida for the 911 facilities or for the facilities between CA and AT&T Florida's Selective Router. Further, AT&T Florida argues that its proposed language does not mention that CA is responsible for 911 trunks. The language clearly states that CA would be solely responsible for the "facilities" that carry OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups for which CA does not dispute that it is responsible. (EXH 26, Bates No. 12)

The parties have also agreed to language that clearly characterizes the trunk groups as ancillary services. (EXH 46, Bates No. 1590-1591; TR 246-247) AT&T Florida argues that with ancillary services, unlike with local interconnection, the POI is not the demarcation point between the parties' network. Therefore, the responsibility for these trunks groups is not divided at the POI. (TR 246) The parties have also agreed to ICA language, in various sections of the ICA, that clearly identify the demarcation point for the trunk groups and delegate the financial responsibility for the transport facilities to the CLEC. (EXH 36, Bates No. 584; TR 246-247)

Staff believes that if CA had an issue with the characterization of the trunk groups as ancillary and with being financially responsible for the facilities beyond CA's POI, CA should have raised the issues prior to agreeing to language that classified the trunk groups as such and designated the financial responsibility to CA. The language that CA is proposing to add in this section contradicts the language that the parties have already agreed to in Network Interconnection § 4.1.2, CIS § 3.3.2, 3.3.3, and 3.3.4, and in E911 § 4.2.1 and 4.2.5, as discussed above. (EXH 2, pp. 74-75; EXH 2, p. 143; EXH 2, p. 151) Therefore, staff believes that AT&T Florida's proposed language is appropriate and that CA should be solely responsible for the facilities that carry CA's OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups.

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[34] See AT&T Florida's proposed language in Network Interconnection sections 4.3.9, 4.3.9.1, 4.3.9.2, 4.3.9.3, and 4.3.9.4. (EXH 2, pp. 77-78)

Conclusion

Staff recommends CA should be solely responsible for the facilities that carry CA's OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups.

Issue 38: May CA designate its collocation as the POI? (Net. Int. § 3.4.4)

Recommendation: Yes. CA may designate its collocation as the POI. (Curry)

Position of the Parties

CA: Yes. CA believes that it is clear that the Telecom Act of 1996 intended for each party to bear its own costs on its side of the POI, and that AT&T must interconnect at any point proposed by a CLEC or prove that the CLEC-proposed POI is technically unfeasible.

AT&T Florida: No. Under controlling federal law, the point of interconnection (POI) must be on AT&T's network. CA's collocation cannot be the POI, because CA's collocation is not on AT&T's network.

Staff Analysis: The parties' dispute stems on whether CA's collocation space can be designated as the POI/demarcation point. The POI is where the carrier's networks meet and interconnect for the mutual exchange of traffic. The POI generally serves as the demarcation point between the carriers' networks. Each carrier is financially responsible for the facilities on its side of the POI.

CA argues that an ILEC's Central Office building is the POI. Therefore, collocation within the office is at the POI. (EXH 27, Bates No. 52, TR 109, CA BR 133) AT&T Florida argues that Section 251(c)(2)(B), requires the POI to be a technically feasible point on AT&T Florida's network. AT&T Florida asserts that its Central Office building and CA's collocation are not located on AT&T Florida's network, as required by federal law. Therefore AT&T Florida believes that CA cannot designate its collocation as the POI. (AT&T Florida BR 130, AT&T Florida BR 133-134)

Parties' Arguments

CA

CA contends that the ILEC's CO building is the POI. Therefore, if a CLEC collocates within the building the CLEC's collocation is "at the point of interconnection." (TR 108) CA argues that its proposed language is intended to make it clear that if CA incurs the expense to build collocation in an AT&T Florida CO and delivers local interconnection there, that CA has met its burden to meet at the POI and is therefore exempt from any additional charges that AT&T Florida may charge for local interconnection circuits delivered by the collocation to some other room within AT&T Florida's CO building. (TR 109)

CA argues that the industry's standard has been that the ILEC's CO was a point on that ILEC's network and thus a collocation within that CO is "at the POI." However, in recent years AT&T Florida has taken the position that the CO building is not a point on its network, and therefore cannot be the point of interconnection.[35] (EXH 27, Bates No. 52; TR 109; CA BR 133) Instead, CA argues that AT&T Florida has designated certain restricted rooms within its CO, in which a CLEC is not permitted to establish collocation, as points on its network. Once the CLEC collocates inside of the CO building, AT&T Florida then charges the CLEC for local

[35] CA argues that no other ILECs in Florida have taken AT&T Florida's position that the CO building is not on the ILEC's network. (TR 110)

interconnection circuits to connect the CLEC's collocation to the POI, which is located in one of the restricted areas within the CO building that AT&T Florida has designated as a point on its network. CA believes that AT&T Florida has changed its position to gain an additional revenue source by charging the CLECs for the circuits that connect the CLECs' collocation to the POI. (CA BR 133)

CA argues that the collocation is the only location within AT&T Florida's CO building that CA is legally permitted to enter. It is also the only location within the building where CA is permitted to present interconnection circuits to AT&T Florida. (CA BR 133) CA asserts that AT&T Florida's proposed language makes it impossible for CA or any other CLEC to actually meet AT&T Florida at the POI. (TR 57) Further, CA believes the language would allow for AT&T Florida to charge every CLEC who collocates inside the CO building for intra-building circuits to connect the CLEC's collocation to the POI. (CA BR 133-134)

CA argues that its collocation is a technically feasible point for interconnection. Therefore, it should be allowed to designate the collocation as the POI. CA contends that 47 C.F.R. § 51.321(e) requires an ILEC to prove to the state commission that an interconnection point is not technically feasible when the ILEC denies a request for interconnection at a particular point. CA attests that AT&T Florida has denied its collocation as a point of interconnection because AT&T Florida has insisted that the collocation is not on its network.

However, CA believes AT&T Florida has failed to prove to this Commission that CA's collocation is not a technically feasible point of interconnection. CA argues that AT&T Florida has also not shown that designating CA's collocation as the POI will cause any harm to AT&T Florida or its network. Therefore, CA believes that it should be allowed to designate its collocation as the POI. (CA BR 134-135, TR 109-110)

AT&T Florida

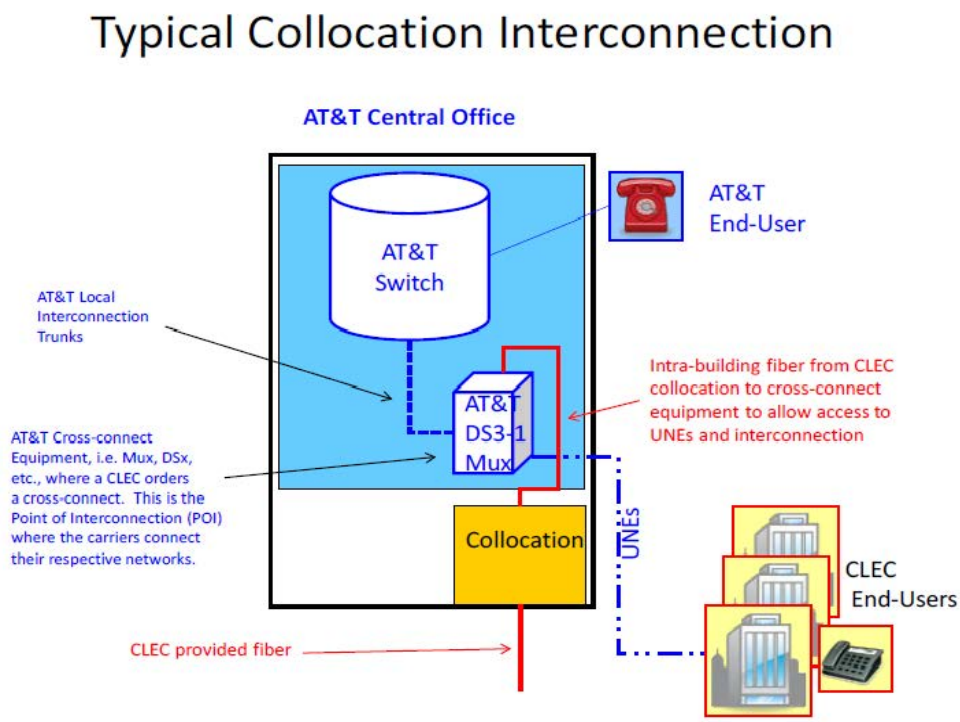
AT&T Florida argues that CA cannot designate the collocation as the POI because the collocation arrangement is not a point on AT&T Florida's network. Section 251(c)(2)(B) of the federal Act requires that interconnection be "at any technically feasible point within the [incumbent] carrier's network" 47 U.S.C. § 251(c)(2)(B). (AT&T Florida BR 130) The space in which CA is collocated, the caged area that CA leases and places its equipment in, is not on AT&T Florida's network. The collocation and CA's equipment are parts of CA's network. Therefore, AT&T Florida argues that FCC Rule 51.305(a)(2) does not allow CA to designate its collocation as the POI. (TR 491)

AT&T Florida further argues that its CO building is also not the POI, and neither are the floors, spaces, or rooms within the building. (TR 491; AT&T Florida BR 135) The CO is the building that houses a part of AT&T Florida's network. However, it is not a point on AT&T Florida's network. (TR 491) When a CLEC collocates with AT&T Florida for the purpose of establishing interconnection, the POI is routinely at the AT&T Florida cross-connect equipment as depicted in Figure 1 below.[36] (TR 503)

[36] See Figure 1: Typical Collocation Interconnection presented in witness Nienast Direct Testimony. This diagram illustrates how CA and AT&T Florida would physically collocate at an AT&T Florida CO building. (TR 490)

In Figure 1, the AT&T Florida switch, the AT&T Florida local interconnection trunks, and the AT&T Florida cross-connect equipment, depicted as DS3-1 Mux, are all parts of AT&T Florida's network. The POI is at the point where the cable running from CA's equipment in its collocation space meets AT&T Florida's network. In other words, the POI is at the cross-connect equipment. (AT&T Florida BR 132, TR 491-492)

FIGURE 1



AT&T Florida contends that after stating that the POI must be at any technically feasible point "within the incumbent LEC's network," FCC Rule 51.305(a)(2), lists six technically feasible points. (AT&T Florida BR 132-133) The FCC's minimum list of technically feasible points of interconnection within the ILEC's network is:

(i) The line-side of a local switch

(ii) The trunk-side of a local switch

(iii) The trunk interconnection points for a tandem switch

(iv) CO cross-connect points

(v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases and

(vi) The points of access to unbundled network elements as described in § 51.319.

AT&T Florida argues that its position is consistent with the FCC's list. (AT&T Florida BR 132-133) For instance, item (iv) on that list (the cross connect point) is where the POI would be in

AT&T Florida's CO. In addition, all of the other points listed on the FCC's list are "clearly and indisputably" within and "on" AT&T Florida's network. Further, AT&T Florida argues that the FCC's list does not include a collocation arrangement or anything like a collocation arrangement as a technically feasible point of interconnection. (AT&T Florida BR 133) The list also does not include the ILEC's CO, floor space within the office, or a collocating carrier's equipment. (AT&T Florida BR 133)

AT&T Florida disagrees with CA's argument that AT&T Florida's proposed language would make it impossible for CA to actually meet at the POI. (TR 57; AT&T Florida BR 134) AT&T Florida argues that when a CLEC collocates with AT&T Florida, for the purpose of establishing interconnection, the POI is routinely at the AT&T Florida cross-connect. The CLEC also routinely pays for the intra-building fiber that runs from the CLEC's collocation space to AT&T Florida's equipment.

Therefore, AT&T Florida argues that if CA collocates it will meet AT&T Florida at the POI by means of a cable, paid for by CA, that runs from CA's collocated equipment to AT&T Florida's cross-connect. (AT&T Florida BR 134) Further, each party is financially responsible for the equipment on its side of the POI. AT&T Florida argues that since the POI is on AT&T Florida's network, CA is responsible for the cost of all the equipment on its side of the POI. Therefore, CA is financially responsible for the cost of the cable that connects CA's equipment in the collocation space to the POI/AT&T Florida's cross-connect. (AT&T Florida BR 133-134)

Analysis

This Commission has addressed the issue of the demarcation point between the CLEC's and ILEC's networks in a previous docket.[37] Typically the demarcation point is the POI. In the initial generic collocation dockets, the Commission addressed "the appropriate demarcation point between the ALEC[38] and ILEC equipment in situations where the ALEC's equipment is connected directly to the ILEC's network, without an intermediate point of interconnection."[39] In the generic collocation dockets proceeding, the Commission decided:

> We are persuaded that the ALEC's collocation site is the appropriate demarcation point. The demarcation point is the point at which each carrier is responsible for all activities on its side. The evidence of record clearly shows that, currently, ALECs are not allowed to manage or control the area outside of their collocation space. Moreover, establishing a demarcation point outside of an ALEC's collocation space could prohibit ALECs from managing or maintaining their

[37] The parties ICA does not define the demarcation point. However, the point of interconnection, as described in the agreed upon language in Network Interconnection § 2.26, serves as the demarcation point. (EXH 2, 69; EXH 36, Bates No.. 566)

[38] ALEC = Alternative Local Exchange Carrier, a term synonymous with and superseded by Competitive Local Exchange Carrier (CLEC).

[39] Order No. PSC-00-0941-FOF-TP, issued May 11, 2000, in Docket Nos. 981834-TP, In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory, and 990321-TP, In re: Petition of ACI Corpg. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation. page 51.

> cabling on their side of the demarcation point without a BellSouth Certified Contractor. Therefore, we find that the ALEC's collocation space is the appropriate demarcation point.
>
> Furthermore, we agree that because the ILECs manage the cabling and cable racking in the common area, the ILEC should designate the location of such a point at the perimeter of an ALEC's space; however, ILECs shall not be required to terminate the cabling onto any ALEC device or equipment because we agree with witness Levy that the ILEC may not reach the ALEC end. The ALEC shall be responsible for terminating the cable to its own equipment and notifying the ILEC when completed. Also, ILECs shall be required to provide an ALEC-specified cable extension from the demarcation point at the same costs at which ILECs provide cable to itself.[40]

The Commission also addressed other points of interconnection by stating:

> ILECs and ALECs may negotiate other demarcation points up to the (conventional distribution frame). However, if terms cannot be reached between the carriers, the ALEC's collocation site shall be the default demarcation point.[41]

A federal appellate court has similarly addressed AT&T Florida's argument that all interconnection must occur on its network pursuant to Section 251(c)(2) of the Act. On March 28, 2013, the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) affirmed the United States District Court for the Southern District of Ohio's (court) ruling regarding the Public Utilities Commission of Ohio's (PUCO) arbitration award between AT&T Ohio and Intrado Communications, Inc. In the arbitration, AT&T Ohio insisted that all points of interconnection be on its network, relying upon Section 251(c)(2), a provision only applicable to incumbent carriers like AT&T Ohio. That argument was identical to AT&T Florida's argument in the instant case. PUCO rejected this argument and instead relied on the general provisions of Section 251(a) and ordered the carriers to establish interconnection points on each other's networks. Both the court and the Sixth Circuit affirmed PUCO's decision.[42]

The courts reasoned that PUCO properly based its decision "on Section 251(a) of the Act, which generally 'establishes the duty of a telecommunications carrier to interconnect directly or indirectly with the facilities of other telecommunications carriers' not on the incumbent carrier-specific provisions of Section 251(c)."[43] Both the court and the Sixth Circuit further clarified the hierarchical nature of the Act:

> The court recognized that there was "no clear answer" to AT&T's argument regarding Section 251(c)(2) and the location of the points of interconnection. It explained that Section 251 provides a tiered hierarchy of interconnection requirements, designed to foster competition in telecommunications markets.

[40] Ibid.
[41] Ibid.
[42] Ohio Bell Tel. Co. v. PUC of Ohio, 711 F.3d 637 (6th Cir. Ohio 2013).
[43] Ibid., p. 4.

> While Section 251(a) imposes a general duty for all carriers to provide for interconnection, subsection (c) provides additional obligations specific to incumbent carriers. These additional obligations include allowing for interconnection "at any technically feasible point within the [incumbent] carrier's network." The court concluded that, based on this hierarchy, the Commission could compel AT&T to interconnect on Intrado's network under 251(a), regardless of 251(c)(2)'s requirement that AT&T offer a point on its own network: "If a competitor [non-incumbent carrier] can compel interconnection to another competitor [non-incumbent carrier] under Section 251(a) . . . it follows that an [incumbent carrier] can be compelled to interconnect with a competitor [non-incumbent carrier] under Section 251(a) as well. [Incumbent carriers], after all, have greater obligations to interconnect than competitor [non-incumbent carriers], not the other way around, as is well-established under the requirements of Section 251."[44]

The Sixth Circuit summarized its decision regarding the Act and the FCC as follows:

> Admittedly, the text of the Act is not always clear. However, we are persuaded that the district court's interpretation, that incumbent carriers are subject to Section 251(a)'s general interconnection duties, is the correct one. Simply stated, it makes little sense to read the Act in a way that imposes fewer duties on incumbent carriers than on less-established, nondominant carriers. As we have previously recognized, the Act is designed to encourage competition by imposing the greatest interconnection duties on incumbent carriers like AT&T. Here, were AT&T not an incumbent carrier subject to Section 251(c) and, instead, were a less-established carrier, the issue would be easy: the Commission clearly would have the authority under Section 251(a) to order interconnection on Intrado's network. There is no limiting language in the statute stating that interconnection must occur on the incumbent carrier's network and, based on the hierarchical structure of the Act, it logically follows that the Commission has the authority to impose this same duty on an incumbent carrier.[45]

The FCC also previously concluded that all telecommunications carriers have the right to interconnect under Section 251(a), and has gone further to affirm that state commissions which deny carriers that right are inconsistent with the Act.

> . . .we reaffirm that wholesale providers of telecommunications services are telecommunications carriers for the purposes of Sections 251(a) and (b) of the Act, and are entitled to the rights of telecommunications carriers under that provision. We conclude that state commission decisions denying wholesale telecommunications service providers the right to interconnect with incumbent LECs pursuant to Sections 251(a) and (b) of the Act are inconsistent with the Act

[44] Ibid., p. 5.
[45] Ibid., p. 8.

> and Commission precedent and would frustrate the development of competition and broadband deployment.[46]
>
> We clarify that LECs are obligated to fulfill all of the duties set forth in Sections 251(a) and (b) of the Act, including the duty to interconnect and exchange traffic. . .[47]

Staff is persuaded that CA's position is correct. It is impossible for CA to bring its facilities to meet AT&T Florida's network at the central distribution frame because CLECs are not allowed to work outside their collocation space. CA would have to hire an AIS to perform this work. This condition has not changed since the Commission's initial decision on this matter over 15 years ago. Staff is also persuaded that AT&T Florida's argument that Section 251(c)(2) supersedes Section 251(a) is sufficiently parallel to AT&T Ohio's position on the same issue that the Sixth Circuit's rationale for rejecting it in that case is also appropriate for the instant case.

Conclusion

Staff recommends that CA may designate its collocation as the POI.

[46] Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513 (WCB 2007).

[47] Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, WC Docket No. 10-143, Declaratory Ruling, 26 FCC Rcd 8259 (2011).

Issue 40: Should the ICA obligate CA to establish a dedicated trunk group to carry mass calling traffic? (Net. Int. § 4.3.9)

Recommendation: No. The ICA should not obligate CA to establish a dedicated trunk group to carry mass calling traffic. (Curry)

Position of the Parties

CA: No. Through this provision, AT&T seeks to force CA to purchase unnecessary services from AT&T in order to obtain local interconnection. Mass calling trunk groups are simply not necessary in a modern SS7 telecommunications network.

AT&T Florida: Yes. Mass calling trunks are necessary to minimize the risk that a mass calling event will cause an outage or otherwise harm the network. AT&T itself establishes segregated trunk groups for mass calling and reasonably expects all carriers with which it interconnects (including its affiliates) to do the same.

Staff Analysis: This dispute hinges on whether CA should be required to purchase high volume call-in (HVCI) trunks, also known as mass calling trunks or choke trunks. A mass calling event (e.g., calling a radio station for free tickets) can trigger an extremely high volume of traffic flowing to a single number, or several numbers served by a given end office switch. As a result, the network can become overwhelmed which can lead to calls being blocked, including 911 calls, as well as damage to the network. AT&T Florida argues that mass calling trunks are necessary to minimize the risk of harming the network and to ensure that no emergency 911 calls are blocked due to avoidable network situations. (TR 495; TR 507) CA argues that mass calling trunks are no longer used to prevent mass calling outages and network damage because they are antiquated and unnecessary. Mass calling trunks have been replaced by SS7.[48] Therefore, CA should not be required to incur the additional cost of purchasing these trunks. (EXH 26, Bates No. 16; TR 58)

Parties' Arguments

CA

CA objects to AT&T Florida's purposed language regarding the establishment of mass calling trunk groups. CA argues that AT&T Florida is seeking to force CA to purchase unnecessary HVCI trunks from AT&T Florida in order to obtain local interconnection. (TR 58) CA argues that CLECs no longer use HVCI trunks to prevent outages, network damage, and blocked calls caused by mass calling events because HVCI trunks are antiquated and have been replaced with the use of SS7 for the exchange of call traffic between carriers.

CA explains that in a pre-SS7 network, if a radio station with 24 telephone lines or trunks provided by an ILEC had a call-in contest and 200 callers attempted to call the station, only the first 24 callers would get through. The ILEC's switch would transmit a busy tone to the remaining 176 callers trying to get through. As a result, a total of 200 interconnection trunks

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[48] SS7=Common Channel Signaling System 7. According to AT&T Florida witness Neinast, SS7 is "a set of telephony signaling protocols, developed in the mid-1970s, that are used to set up and take down telephone calls." (TR 495)

between the CLEC and ILEC would potentially be tied up during the call-in event due to callers repeatedly dialing the radio station trying to get through to win the contest. (EXH 26, Bates Nos. 15-16)

However, CA explains that in the same scenario with modern SS7 only 24 calls would be completed. Therefore, only 24 interconnection trunks between the CLEC and the ILEC would be tied up. This is because with SS7 when a CLEC switch tries to place each call to the radio station an SS7 setup message is sent to the ILEC's switch to check if the call can be completed. Once the first 24 calls to the radio station have been completed, the ILEC's switch sends back a SS7 response message to the CLEC's switch indicating that the call cannot be completed. The CLEC's switch then plays a busy tone for the caller. With SS7 the call is never sent across the interconnection trunks from the CLEC to the ILEC unless the line is free and the call can be completed. As a result, there is no choke event to mitigate when SS7 is used. (EXH 26 Bate Nos. 15-16)

CA argues that the parties' ICA already requires that all interconnection trunks be SS7. Therefore, CA believes that requiring the use of HVCI trunks is entirely unnecessary and will increase the CLEC's overall network costs. (EXH 26, Bates No. 16; TR 58) CA argues that AT&T Florida requiring CA to purchase the unneeded trunks is also anti-competitive and discriminatory because this requirement is not imposed uniformly by AT&T Florida upon all CLECs and Commercial Mobile Radio Service carriers. (TR 58) Further, CA argues that other CLECs operating in Florida do not have choke trunks and no harm has been demonstrated as a result. (TR 112)

CA asserts that AT&T Florida's proposed language also lacks parity because it does not impose any requirements upon AT&T Florida to order choke trunks to CA. (TR 58; TR 111; EXH 46, Bates No. 1596) CA believes that neither party should have to order or pay for choke trunks because they are not necessary, but to the extent that AT&T Florida argues that choke trunks are absolutely required for interconnection, CA believes that the requirement, including the financial obligations, should be equally imposed on both parties. (EXH 46, Bates No. 1957; TR 111-112)

Further, AT&T Florida's witness Neinast cited three mass calling events in his testimony. (TR 494; TR 503-504) These events were cited as examples of what could happen during a mass calling event and to demonstrate why mass calling trunks are necessary. However, CA contends that these events are not persuasive at demonstrating the need for the trunks. (TR 111) First, CA argues that AT&T Florida only cited three mass calling events and the most recent event occurred in 2002, over ten years ago. Second, CA argues that citing three events nationwide, none of which occurred in Florida, "over the entire history of the telephone network" is "not indicative of an overall problem." In addition, CA argues that none of the events involved a CLEC, but instead were all internal network issues within AT&T Florida's network. (TR 111)

CA further argues that CLECs like CA typically provide service to business customers as opposed to residential customers like ILECs. Mass calling events typically involve residential customers calling a single number. Therefore, during a radio call-in contest, if CA were involved, the radio station would most likely be CA's customer not the residential customers who would typically call the station. (EXH 46 Bates No. 1598) Because AT&T Florida has the vast majority of the residential customers who would be making the calls during a mass calling event, CA argues that AT&T Florida is more likely to need mass calling trunks than CA. (EXH 46, Bates Nos. 1596-1597)

CA also argues that a CLEC is in control of its own call routing. (EXH 26, Bates No. 16) Therefore, if a mass calling event did occur, CA could simply redirect the overflow traffic to its long distance trunks to prevent block calls or an outage. (EXH 26, Bates No.16) CA insists that how a CLEC completes calls made by its subscribers should be that carrier's prerogative and that AT&T Florida has no authority to demand that a CLEC use HVCI trunks. Especially, when the ICA already requires SS7 and when a CLEC can redirect its overflowing calls to an IXC which completes the calls to the ILEC at the CLEC's added expense. (EXH 26, Bates No. 16)

AT&T Florida

AT&T Florida argues that public safety demands that it take precautions to guard against the risk of potential damage to the Public Switched Telephone Network (PSTN). (TR 507) A mass calling event can overwhelm an end office switch and potentially cause network failure. A network failure caused by a mass calling event could trigger a delay or prevent end users from contacting 911 or other emergency services. (TR 494-495) Since mass calling trunks are designed to limit the number of calls allowed at one time to a particular mass calling number, AT&T Florida argues that these trunks are necessary to protect the PSTN from damage and to minimize the risk of a mass calling event causing an outage or blocked calls to emergency services. (TR 494-495)

As a 911 provider, AT&T Florida argues that it is responsible for ensuring that no emergency 911 calls are blocked due to avoidable network situations. AT&T Florida asserts that while the likelihood of a mass calling event occurring and resulting in a network impairment that would impede callers from reaching 911 or other emergency services is relatively low, it could certainly happen. AT&T Florida argues that it cannot afford to run this risk (TR 494-495). Therefore, reasonable preventative measures must be taken, like establishing mass calling trunks on AT&T Florida’s network and requiring all carriers who interconnect with AT&T Florida to do the same. (AT&T Florida BR 139)

Further, AT&T Florida attests that there is a sound basis for its concern about the possible dire consequences of a mass calling event. (AT&T Florida BR 137-138) In his testimony, AT&T Florida’s witness Neinast cited three mass calling events that occurred in 1992, 1993, and 2002. (TR 494; TR 503-504) During the 1992 mass calling event, a caller made numerous attempts to call 911 after his wife suffered a heart attack. Each of his call attempts resulted in a busy signal. The caller eventually dialed 0 for the operator, however; his wife died before the ambulance could respond. (AT&T Florida BR 137; TR 494) During the 2002 mass calling event two AT&T California Access Tandems experienced significant degradation during the event (both switching machines went into “machine congestion,” call register capacity was exceeded; billing records were lost; and control, visibility and diagnostic capability were lost).[49] (AT&T Florida BR 137-138; TR 494)

[49] Witness Neinast also testified that during the 1993 mass calling event the Dallas/Fort Worth area experienced a similar “machine congestion.” (AT&T Florida BR 137-138; TR 494)

AT&T Florida acknowledges that none of the mass calling events cited occurred in Florida or involved CLECs, as CA pointed out. However, AT&T Florida argues that just because the mass calling events that were cited did not occur in Florida, there is nothing distinctive about Florida that would make such an event less likely to occur here than somewhere else. (AT&T Florida BR 139) AT&T Florida also states that the same thing could happen in Florida, in cities like Miami, Tampa Bay, Jacksonville, or any other metropolitan area in Florida where there is a community of carriers that do not have mass calling trunks when a mass calling event occurs. (EXH 49, Bates No. 1870) Further, although no CLECs were involved in the cited events, AT&T Florida argues that these events were important to point out because they each involved other carriers that were interconnected with AT&T's local network and where mass calling trunks were not used. (EXH 49, Bates No.1869)

AT&T Florida argues that the use of SS7 does not obviate the need for mass calling trunks nor are mass calling trunks a relic of pre-SS7 as CA has argued. In fact, all of the AT&T ILECs involved in the mass calling events referenced in witness Neinast's testimony all used SS7. (TR 494; TR 496; TR 503-504) Further, CA asserts that with SS7 trunks will not get tied up or choked during mass calling events because if the number called is busy the call will not be completed. However, AT&T Florida contends that this assertion is incorrect.

Witness Neinast further testifies that while SS7 signaling in some networks can look ahead to determine if the called party's line is on-hook or off-hook, AT&T Florida's SS7 does not have this feature; nor does the SS7 of any other Regional Bell Operating Company. (TR 503-504) AT&T Florida also asserts that if CA's argument regarding the usage of SS7 as a means to prevent damages to the network and blocked calls was correct, the damages that occurred as a result of the mass calling events cited in witness Neinast's testimony would not have occurred. Further, the calamities described in these events prove that using SS7 does not preclude the need for mass calling trunks. (AT&T Florida BR 140)

AT&T Florida realizes that there is a cost to the CLEC to establish HVCI trunks, similar to the cost for establishing trunks for access to the 911 network. However, public safety demands that AT&T Florida guard against the risk of damaging the PSTN. Therefore, to guard against these risks AT&T ILECs, including AT&T Florida, have establish separate mass calling trunks to protect the PSTN and AT&T's own network. As an added precaution, AT&T ILECs, including AT&T Florida, also require interconnecting carriers to do the same. (EXH 36, Bates No. 587; AT&T Florida BR 139) Further, AT&T Florida asserts that it has been a policy and practice of AT&T for years to insist on including mass calling provisions in their ICAs (TR 504, AT&T Florida BR 141)

AT&T Florida argues that the use of mass calling trunks is not just an AT&T policy. Other carriers throughout the nation also use choke trunks. In fact, the use of choke trunks was voted on by the entire industry as the preferred methodology for preventing mass calling events from causing network outages. (TR 510) This practice is also supported by the Network Interconnection Inoperability Forum (NIIF), an industry standards group that establishes best practices for the telecommunications industry. (AT&T Florida BR 139, EXH 49, Bates Nos.1878-1880)

AT&T Florida disagrees with CA's argument that if a mass calling event did occur that CA could redirect the overflow traffic to its long distance trunks to prevent block calls or an outage. (EXH 26, Bates No.16) AT&T Florida argues that CA's contention mistakenly assumes that if calls from CA's customers cause the blockage that only CA's customers would be affected. However, AT&T Florida argues this is not the case; rather as described in the 2002 mass calling event cited in witness Neinast's testimony, the whole network can be affected. Furthermore, AT&T Florida argues if CA were to direct its overflow calls to its long distance trunks, this could subject the network to further blocked calls because the choke network is a local network and does not contemplate IXC traffic being pumped into the local area. (AT&T BR 141, TR 496)

AT&T Florida asserts that CA's argument that mass call-in events are caused by residential customers rather than business customers, and that CLECs typically do not serve large numbers of residential customers misses the point. AT&T Florida argues that CLECs "typically" serving a smaller residential customer base is irrelevant. CA has not indicated that it will not serve a larger residential customer base and there are no guarantees that other carriers adopting CA's ICA will not do so either. Further, in any event, AT&T Florida argues that employees at a place of business are just as likely as anyone else to make calls during mass calling events. (TR 496)

Analysis

This issue disputes whether CA should be required to install HVCI MF[50] trunks to mitigate mass calling events. Staff believes that it is extremely unlikely that a mass calling event causing network congestion will occur, and that existing provisions encompass mass calling mitigation.

Staff agrees that AT&T Florida, as a 911 provider, is also responsible for ensuring that no emergency 911 calls are blocked due to avoidable network issues. (TR 493) However, staff agrees with AT&T Florida's assertion that the likelihood of a mass calling event occurring and resulting in a network impairment that would impede callers from reaching 911 or other emergency services is relatively low. (TR 494-495) Staff goes further and believes that such an event is extremely unlikely. AT&T Florida's witness Neinast cited three mass calling events that resulted in blocked calls and network damages. However, AT&T Florida acknowledged that none of these events involved CLECs or occurred in Florida. (AT&T Florida BR 139) In fact, staff notes that the events that occurred in 1992 and 1993 were before CLECs existed. Further, AT&T Florida was unable cite any recent events, including those involving CLECs, that have occurred in Florida or anywhere else. (EXH 49, Bates No. 1869-1873)

CA argued that CLECs no longer use HVCI trunks because they are outdated and have been replaced with SS7. (EXH 26, Bates No. 16, TR 58) On the other hand, AT&T Florida argued that the use of HVCI trunks to manage mass calling events is a well established practice that is supported by industry standards groups. (AT&T Florida BR 139, EXH 49, Bates Nos. 1878-1880) AT&T Florida's witness Neinast states that the industry voted that dedicated mass calling trunks are the preferred option. (EXH 49, Bates No. 1868) Upon staff's request, witness Neinast produced a document he described in his deposition that supported this claim. The document provided is titled NIIF Issue Identification Form, Issue Title: Network Management SS7 Controls for High Volume Call In (HVCI) Events. Witness Neinast described the group that issued this document:

[50] MF = Multi Frequency, an in-band signaling system pre-dating SS7.

> NIIF is the Network Interconnection Interoperability Forum, and it is a subset of ATIS, which I'm going to try to remember that acronym, Alliance for Telecommunications Industry Solutions. And it's an interindustry forum where carriers–I believe there's a fee, they pay to be a part of and they establish best practices for the telecommunications industry.
>
> And there's a series of subjects that they tackle and present to both the FCC and to other industries. They create standards for the telecommunications industry and various other things. In fact, the study I referenced earlier, the NIIF, I believe was a part of that comparison between the call gapping model. And the Mass Calling Trunk Group Model won out within that forum.

(EXH 49, Bates Nos. 1878-1879)

The NIIF had HVCI calling as an open issue from January 15, 2003 until September 5, 2005, with the following issue statement:

> The current NIIF Reference Document Part VI Network Management Guidelines primarily addresses Network Management controls for MF trunking of HVCI events. MF trunking was retained to handle HVCI as companies migrated their networks to SS7. Some new technologies (e.g., Softswitches) do not support MF trunking. The NIIF needs to look at HVCI via SS7 defensive mechanisms and preventive measures to mitigate switch overload and network congestion situations.

(EXH 49, Bates No. 1888)

Staff interprets from the title and issue statement that this issue involved finding the preferred solution via SS7 defensive control mechanisms for mitigating network congestion situations. While older-generation MF trunking was maintained for HVCI calling as carriers migrated to SS7, MF trunking was not compatible with newer SS7 technologies, so a solution needed to be found to mitigate congestion for non-MF, SS7-based trunking.

After at least a dozen bi-monthly meetings and several conference calls, the following was entered as a point noted:

> 10. Ms. Meier stated that based on the participation on this call, the Far End Busy solution seems to be the best solution at this time and participants should come to the June meeting ready to make a final decision.

(EXH 49, Bates No. 1896)

The solution passed in June 2005:

> It was agreed that Issue #0224, Network Management SS7 Controls for High Volume Call In Events (HVCI), will be placed in Initial Closure with the following resolution statement.
>
> *The NIIF agrees that the "Far end busy" solution* has *been shown* as *a successful method to reduce call attempt rates for HVCI calls over* SS7 *trunks to approximate volumes traditionally achieved using MF choke trunks. With appropriate implementation of a "far end busy" configuration at a choke tandem, the impact of using* SS7 *trunks for HVCI calls can be reduced to an acceptable level.*
>
> *It should be noted that the use of separate dedicated trunk groups can be a key factor in limiting the impact on the signaling network of calls to HVCI codes.*
>
> *This solution does not address the impacts of mass calling to non-HVCI codes, such as 8XX numbers. Solutions for mass calling to non-HVCI codes may still need to be considered.*
>
> *The NIIF agreed to place the new text in Part VI, Network Management Guidelines, of the NIIF Reference Document, to become a new Section 6, Network Management* SS7 *Controls for High Volume Call In (HVCI) Events.*

(EXH 49, Bates Nos. 1897-1898)

As staff understands this resolution, it offers a solution for SS7 trunking, and not MF trunking. While this resolution does state that the use of separate dedicated trunk groups can be a key factor, staff believes that this resolution only applies to SS7 trunks.

Staff notes that AT&T Florida's proposed language requires CA to use MF trunks for mass calling. Even if the NIIF's resolution can be construed to apply to MF trunks, its primary recommendation is the implementation of a "far end busy" SS7-based defense control configuration at an ILEC's choke tandem, not the use of dedicated trunk groups.

This appears to staff as very similar to witness Ray's testimony explaining how the SS7 network handles far end busy situations. As explained in witness Ray's testimony, SS7 is designed to prevent trunks from choking. Choking is avoided because with SS7 a call is not completed unless the called party's line is free. During a mass calling event, with SS7 when the called party's number is dialed, a signal is sent to determine if the party's line is on or off-hook. If the line is off-hook, the caller hears a busy signal. If the line is free or on-hook the call can be completed by sending it across the interconnection trunks from the CLEC's switch to the ILEC's switch. Because the call is only completed when the called party's line is free, the trunks do not get tied up or choked. (EXH 26, Bates Nos. 15-16) While AT&T Florida acknowledges that networks with SS7 do have the capability to look ahead to determine if the called party's line is on-hook or off-hook, AT&T Florida argues that its SS7 network does not have the capability to do so. (TR 503-504) AT&T witness Neinast offered no explanation as to why.

Staff believes that aside from each party's arguments regarding the applicability and capability of SS7, additional language mitigating mass calling events such as AT&T Florida proposes here is not necessary. Planning for and mitigating the effects from mass calling events is already covered in agreed-to sections of the proposed General Terms and Conditions:

> 39.3 Each Party maintains the right to implement protective network traffic management controls, such as "cancel to", "call gapping" or seven (7)-digit and ten (10)-digit code gaps, to selectively cancel the completion of traffic over its network, including traffic destined for the other Party's network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.
>
> 39.4 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties.
>
> 39.5 The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes to prevent or mitigate the impact of these events on the public-switched network, including any disruption or loss of service to the other Party's End Users. Facsimile (FAX) numbers must be exchanged by the Parties to facilitate event notifications for planned mass calling events.

(EXH 2, General Terms and Conditions § 39.3-39.5)

Staff believes this proposed language adequately covers both parties' obligations concerning mass calling events.

Staff also believes that just like AT&T Florida, CA also has a duty to protect the PSTN and its customer base. Knowing the potential damage that can occur as a result of a mass calling event, staff believes there is no incentive for CA to allow circumstances to trigger network congestion at any time, as it will negatively affect CA's customers to an equal degree. Further, staff agrees that because of the customer base that CA will serve, CA is unlikely to receive call surges of the type that HVCI trunks are designed to handle. Staff agrees that using SS7 is sufficient to prevent trunks from choking and causing damage to the network and blocked calls.

Further, the parties' ICA already requires all interconnection trunks to be SS7. (EXH 26, Bates No. 16, TR 58) Staff agrees with CA's assertion that AT&T Florida requiring CLECs to establish HVCI trunks, in addition to SS7, will increase the CLEC's overall costs. (EXH 26, Bates No. 16, TR 58) In addition, there are other methods, as described by CA that can be used, such as redirecting call traffic, to further prevent blocked calls and outages. (EXH 26, Bates No.16) Finally, mass calling events are already covered in another section of the proposed agreement.

Therefore, based on the discussion above, and staff's analysis of this issue, staff believes that the parties' ICA should not include the language that AT&T Florida has proposed for Network Interconnection Section 4.3.9 that requires CA to establish a dedicated trunk group to carry mass calling traffic.

Conclusion

Staff recommends the parties' ICA should not obligate CA to establish a dedicated trunk group to carry mass calling traffic.

Issue 41: Should the ICA include CA's language providing for SIP Voice-over-IP trunk groups? (Net. Int. § 4.3.11)

Recommendation: No. The ICA should not include CA's language providing for SIP Voice-over-IP trunk groups. (Curry)

Position of the Parties

CA: Yes. CA believes that if, subsequent to a conforming ICA being filed in this docket, AT&T later offers more modern, cost effective local interconnection to others that CA should have an equal ability to order the same interconnection services offered to others without the need to re-negotiate/re-arbitrate this entire agreement.

AT&T Florida: No. CA's language is objectionable for several reasons, including that it is directly at odds with the FCC's "All-or-Nothing Rule." Under that rule, a carrier cannot adopt just part of an existing ICA, which is what CA is asking the Commission to allow it to do.

Staff Analysis: This issue seeks to determine if the parties' ICA should include CA's proposed language regarding SIP Voice-over-IP trunk groups. Internet Protocol (IP) is alternatively called SIP, which is an acronym for Session Initiation Protocol. (AT&T Florida BR 143) SIP is responsible for connecting, monitoring and disconnecting voice and video calls over IP networks. It is a communications protocol that uses an IP telephony signaling protocol for Voice over Internet Protocol (VoIP) calls.

Trunks are communications pathways from one point to another. The term "SIP Voice-over-IP trunk groups" refers to trunk groups that carry, or that are capable of carrying, traffic in IP format, as opposed to Time Division Multiplexing (TDM). (AT&T Florida BR 143, TR 440-441) TDM is the format in which voice traffic has been transported for many years on the public switched telephone network. When traffic is in TDM format, it is transported over dedicated circuits using SS7 signaling. (TR 441) When traffic is in IP format, in contrast, a given message is not sent over a dedicated circuit using SS7 signaling. Instead, the signals are divided into packets and each packet is sent over the fastest available route in a packet switched network. The packets are then reassembled at the receiving end. (TR 441)

Parties' Arguments

CA

CA argues that in the future, after the parties' ICA has been established, if AT&T Florida begins offering IP interconnection to other carriers that CA should be entitled to obtain the same interconnection services under the same terms and conditions as the other carriers. (TR 59) CA contends that adding its proposed language to the parties' ICA is the only way to ensure that it receives equal and fair treatment. (TR 59) However, CA argues that AT&T Florida has refused CA's proposed language, which would provide SIP local interconnection as an option to CA instead of TDM local interconnection, under claims of technical infeasibility. (TR 146) CA contends that AT&T Florida has an anti-competitive motive for keeping CLECs interconnected using legacy technology because legacy TDM trunks are less scalable and more expensive for CLECs. (TR 59, CA BR 146)

Despite AT&T Florida's claims that it is not technically capable of offering SIP interconnection for the purpose of local interconnection, CA believes that AT&T Florida is capable because another AT&T Florida entity currently offers the service on a commercial basis under the name AT&T Voice over IP Connect Service (AVOICS). Therefore, CA argues if some version of AT&T Florida is offering IP interconnection now (whether under an ICA, contract, or by tariff), then IP interconnection must be technically feasible and CA should be entitled to obtain services. (TR 113)

Further, CA argues that AT&T Florida's AVOICS service is not technically distinct from local interconnection service. (CA BR 146, TR 112) CA asserts that AT&T Florida has also not shown that the technology that AT&T Florida already uses to offer its commercial SIP interconnection service could not be employed to provide interconnection to CA. (CA BR 147) CA argues that regardless of which AT&T Florida entity operates the service, AT&T Florida's AVOICS product is interconnected with AT&T Florida's network for the exchange of telecommunications traffic. Therefore, CA believes that AT&T Florida's assertion that it is not technically capable of IP interconnection is false. (CA BR 148) Further, CA contends despite AT&T Florida's claims that it is not technically capable of SIP interconnection, AT&T Florida was ordered by another Public Service Commission to file its SIP ICA with that Commission as an ICA under § 251 and § 252.[51] (TR 113, CA BR 146)

CA argues that pursuant to the requirements of 47 C.F.R. § 51.305, it is entitled to have IP interconnection terms included in the parties' ICA. However, as a compromise CA has instead proposed that in the event that AT&T Florida offers SIP Interconnection to other carriers in the future, that CA be afforded its rights under 47 C.F.R. § 51.305 to obtain the same terms from AT&T Florida that it offers any other carrier for IP interconnection. (CA BR 148) CA argues that its proposed language does not require AT&T Florida to develop or invent anything new; it simply prohibits AT&T Florida from offering more modern IP services selectively to others and not to CA. (CA BR 146)

CA asserts that the plain reading of 47 C.F.R. § 51.305 does not seem consistent with AT&T Florida's argument that if AT&T Florida does offer IP interconnection at a later date and CA wishes to obtain IP interconnection, that the parties' ICA must be discarded and renegotiated. (CA BR 148) Further, CA contends that AT&T Florida's argument that CA's proposed language is contrary to the FCC's All-or-Nothing rule (47 C.F.R. § 51.809(a)) is misplaced. CA argues that the All-or-Nothing rule governs ICA adoptions and CA has not proposed to adopt all or part of any other ICA. (CA BR 148-149) Nor is CA attempting to pick and chose other ICA provisions. (TR 114) CA argues that it has simply asserted its rights under 47 C.F.R. § 51.305(4), which stands distinct from its ability to adopt another carrier's ICA. (CA BR 148-149)

[51] In Case No. U-17349, issued December 6, 2013, "In the matter of the petition of Sprint Spectrum L.P. for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish interconnection agreements with Michigan Bell Telephone Company d/b/a AT&T Michigan," the Michigan Public Service Commission overturned a decision by an arbitration panel that said carriers should wait for the FCC to negotiate interconnection terms. In its decision, the Michigan PSC ruled that AT&T Michigan was required to provide Sprint IP interconnection for the transmission of telephone calls that "AT&T provides to itself, affiliates or third parties pursuant to Section 251(c)(2) of the Act." (CA BR 146; TR 113)

CA contends that it is merely seeking to include a reasonable provision in its arbitrated agreement which is solely at issue because of AT&T Florida's claim that it is currently not technically capable of SIP interconnection. CA does not believe that AT&T Florida's claim is true, and believes that it is entitled to SIP interconnection but for AT&T Florida's claim that it is not feasible. (TR 114) CA acknowledges that the FCC is currently considering the issue of whether the interconnection requirement in Section 251(c)(2) of the Act applies to IP interconnection. (EXH 27, Bates No. 55)

However, CA argues that absent the FCC's ruling, states have the authority to determine in an arbitration proceeding whether 251 and 252 are technology neutral. (EXH 27, Bates No. 55) Therefore, CA argues that this Commission has the authority to require interconnection in any technically feasible manner between an ILEC and CLECs, which is what CA is seeking. (EXH 27, Bates No. 55) To the extent that it is proven at some point that AT&T Florida is technically capable of providing SIP interconnection, CA asserts that it is entitled to obtain the more modern, cost effective interconnection so that CA can more cost-effectively compete without discrimination. (TR 114; EXH 27, Bates No. 55) CA also believes that it is entitled to SIP interconnection in parity with what AT&T Florida offers other carriers. (TR 114)

AT&T Florida

AT&T Florida argues that it currently does not offer, install or provide interconnection trunking using SIP Voice-over IP or Voice-using IP to any entity. (TR 462) AT&T Florida's network is a TDM network. All traffic on its network is in TDM format, and AT&T Florida only exchanges traffic with other carriers, including its affiliates, in TDM format. (AT&T Florida BR 143, TR 441) Further, AT&T Florida argues that its network does not include any IP-capable equipment and AT&T Florida is not interconnected with any carrier in IP format. (AT&T Florida BR 143, TR 441)

AT&T Florida contends that it does not have the capability to provide interconnection trunking using SIP Voice-over IP or Voice-using IP. Therefore, it cannot provide SIP interconnection to CA. AT&T Florida also asserts that it has no intention to provide interconnection trunking using SIP Voice-over IP or Voice-using IP unless there is a change in the existing law. (TR 462) However, if the law changes, AT&T Florida argues that CA would be entitled to amend the parties' ICA accordingly. (TR 462)

AT&T Florida argues that the Act does not require IP interconnection. Other carriers within the industry are divided on this issue. However, AT&T Florida asserts that whether the interconnection requirement in Section 251(c)(2) of the Act applies to IP interconnection (in the case of an ILEC with IP capability) is an open question that is currently pending at the FCC.[52] (AT&T Florida BR 143-144, TR 441-442) In any event, AT&T Florida argues that this Commission does need to decide whether the Act requires IP interconnection to resolve the current issue.

[52] AT&T Florida noted that CA acknowledged that the FCC is considering the issue as well as other states in EXH 27, Bates No. 55. (AT&T Florida BR 143)

CA's proposed language for Network Interconnection §4.3.11, to which AT&T Florida objects, states in pertinent part:

> In the event that AT&T-21STATE offers, installs, or provides any interconnection trunking using SIP Voice-over-IP or Voice-using-IP to any entity including its affiliates, CA shall be entitled to order the same type of interconnection trunking in the same areas and under the same terms where it has been offered, installed or provided for others under this agreement. The parties may mutually agree to complete a contract amendment to codify additional terms and conditions, but such an amendment shall not be required in order for CA to obtain the service under nondiscriminatory terms and pricing. . . .

AT&T Florida argues that if in the future AT&T Florida provides SIP interconnection to another carrier, CA's proposed language would allow CA to adopt the rates, terms and conditions governing IP interconnection of that carrier's agreement without adopting the remaining provisions in the agreement. (AT&T Florida BR 145) Therefore, CA's proposed language is unlawful and directly contrary to the FCC's "All-or-Nothing Rule" (47 C.F.R. § 51.809(a)) implementing Section 251(i) of the Act. (AT&T Florida BR 144) Under 47 C.F.R. § 51.809(a), a carrier cannot adopt part of an existing ICA. The carrier must adopt the ICA in its entirety. (TR 448; TR 450; AT&T Florida BR 145)

AT&T Florida argues that this principle recognizes that when the ICA was negotiated, there may have been gives and takes that resulted in some provisions being more favorable to the CLEC, and other provisions being less favorable to the CLEC, than the law otherwise requires. AT&T Florida asserts that CA's proposed language clearly violates the FCC's All-or-Nothing Rule, because it would allow CA to adopt the IP interconnection provisions in another carrier's ICA (a hypothetical future ICA) without accepting the remainder of that carrier's ICA. (TR 448; TR 450) AT&T Florida argues that if the Commission were to adopt CA's proposed language that it would be giving CA advanced permission to violate the All-or-Nothing Rule in the future. (AT&T Florida BR 145)

AT&T Florida further argues that aside from CA's proposed language being unlawful, the language is also problematic because it is contrary to the fundamental principle, which this Commission has recognized, that the parties' relations with respect to the matters covered by the ICA are governed solely by the ICA. If something happens during the term of the ICA that warrants a change in those relations, that change must be reflected in an amendment to the ICA before it goes into effect. AT&T Florida believes that CA's proposed language stating: "The parties may mutually agree to complete a contract amendment to codify additional terms and conditions, but such an amendment shall not be required in order for CA to obtain the service under nondiscriminatory terms and pricing," directly conflicts with this fundamental principle. (TR 448-449)

Section 252(i) of the Act provides, "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." AT&T Florida argues that the FCC has interpreted Section 252(i) to mean that an incumbent LEC, such as AT&T Florida, must permit a requesting carrier, like CA, to adopt as its own any other carrier's ICA that has been approved by the state commission. (TR 444)

AT&T Florida asserts that under certain conditions CA may have the right to obtain the same terms and conditions for IP interconnection in the future, if AT&T Florida enters into an IP ICA with another carrier. (TR 442-446, AT&T Florida BR 145) For instance, if AT&T Florida were to establish an IP network, the FCC were to rule that Section 251(c)(2) requires interconnection in IP format, and AT&T Florida entered into an ICA with a CLEC that includes rates, terms, and conditions for IP interconnection, CA could adopt that CLEC's ICA as its own. By doing so, CA would obtain the same rates, terms, and conditions for IP interconnection that AT&T Florida agrees to with the other CLEC. Therefore, AT&T Florida argues that including language in the parties' current ICA authorizing CA to do so is not needed because the law already allows for it. (TR 442-446, AT&T Florida BR 145-146)

Further, AT&T Florida argues that apart from adopting another carrier's ICA, if the FCC were to determine that Section 251(c)(2) requires ILECs to provide IP interconnection during the term of the parties' ICA, regardless of what AT&T Florida did with any other carrier, CA could assert its rights pursuant to the agreed upon "Intervening Law" provisions in Section 24 of the General Terms and Conditions of the ICA that the parties are currently arbitrating now. (TR 445, EXH 2, p. 49) Under the Intervening Law provision, a change in law would entitle CA to amend the ICA to provide for IP interconnection. AT&T Florida attests that in this scenario CA would not necessarily obtain the same rates, terms and conditions for IP Interconnection as another CLEC (though it might). However, assuming that if the FCC requiring ILEC's to provide IP interconnection qualified as a change of law event under Section 24 of the General Terms and Conditions, CA would be entitled to rates, terms and conditions for IP interconnection that conform with whatever rules the FCC might establish for IP interconnection. Therefore, AT&T Florida argues since CA is entitled to the change of laws rights under Section 24 of the General Terms and Conditions, there is no need to include additional provisions covering a change of law with respect to IP interconnection in the parties' ICA.[53] (TR 442-446, AT&T Florida BR 145-146)

AT&T Florida also argues that this Commission's previous decisions support AT&T Florida's position regarding the change in law provision. In an arbitration between Global NAPs (GNAPs) and Verizon, Docket No. 011666-TP, GNAPs proposed to include in the ICA a provision, in addition to the general change-in-law provision on which the parties agreed, specifically entitling GNAPs to renegotiate the reciprocal compensation provisions in the ICA if the FCC's then recently-issued Internet Service Provider (ISP) Remand Order was overturned or modified. (The 2001 ISP Remand Order addressed intercarrier compensation on ISP-bound traffic, which was a hot topic at the time.) The Commission rejected GNAPs' proposal in Order No. PSC-03-0805-FOF-TP, issued July 9, 2003, at 43 which states:

[53] AT&T Florida noted that if the FCC determined that section 251(c)(2) does not require IP interconnection and AT&T Florida were to enter into a commercial agreement with a CLEC that includes rates, terms, and conditions for IP interconnection that AT&T Florida is not required under the 1996 Telecom Act to provide CA or any other CLEC with the same rates, terms, and conditions. However, the commercial agreement may be available to CA under certain circumstances. Commercial agreements, meaning a voluntary negotiated agreement, are not compelled by or subject to sections 251 and 252. (AT&T BR 146; TR 446)

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

(TR 450-451, AT&T Florida BR 146-147)

Further, in an arbitration proceeding between Verizon and Bright House Networks (Bright House), Docket No. 090501-TP, Bright House asked the Commission to address a future interconnection issue. However, the Commission decided that it should not make a decision regarding the future issue. Order No. PSC-10-0711-FOF-TP, issued December 3, 2010, at 11, states in pertinent part:

> Bright House is asking this Commission to address future interconnections without reference to any specific network configuration. Upon review, we are persuaded by Verizon that we should not make decisions at this time regarding such future interconnections . . . . Brighthouse has not presented sufficient justification to warrant a ruling on issues that may exist at some time in the future.

(TR 451, AT&T Florida BR 147)

AT&T Florida argues that CA’s proposed language is unnecessary. There are circumstances under which the Act would allow CA to obtain IP interconnection from AT&T Florida in the future (e.g., lawful adoption of another carrier’s ICA; change of law amendment to this ICA), and there are circumstances under which it would not (e.g., FCC rules IP interconnection not subject to Act and AT&T Florida enters into a commercial agreement for IP interconnection). Therefore, AT&T Florida argues that the ICA the parties are arbitrating now need not and should not try to anticipate those circumstances. Further, CA’s proposed language violates the FCC’s All-or-Nothing Rule. Therefore, AT&T Florida believes that this Commission should reject the ICA language that CA has proposed for section Network Interconnection § 4.3.11.

In regards to the Michigan Public Service Commission (MPSC) Order that CA referenced wherein the MPSC ordered AT&T Michigan and Sprint Spectrum L.P. to file an ICA that included provisions for IP interconnection, AT&T Florida argues that the Michigan Order has no bearing on the issue in this proceeding. Further, the Order arose from circumstances that were not presented in this arbitration.[54] (AT&T Florida BR 144, EXH 38, Bates No. 729) The question presented in this issue is whether the parties' ICA should include CA's proposed language providing that if AT&T Florida provides interconnection trunking using SIP Voice-over-IP or Voice-using-IP to any entity, CA shall be entitled to order the same type of interconnection trunking in the same areas and under the same terms. AT&T Florida argues that

[54] Staff notes that the parties in the Michigan PSC arbitration case (Case No. U-17349) asked the MPSC to determine whether or not mandatory IP-to-IP interconnection should be included in the parties’ ICA. The parties in the present arbitration have not asked this Commission to decide on that issue.

no issue remotely resembling the present issue was ever presented to the MPSC and that no such issue was addressed in the Michigan Commission's Order. (EXH 38, Bates No. 729) However, AT&T Florida argues that the MPSC order is unlawful and is currently being appealed in the United States District Court for the Western District of Michigan.[55] (AT&T Florida BR 144, EXH 38, Bates No. 729)

Analysis

Both parties agree that the FCC has not made a decision on whether the Act applies to IP interconnection. (TR 441, AT&T Florida BR 143, EXH 27, Bates No. 55) However, CA contends that absent the FCC's rulings, states have the authority to determine in an arbitration proceeding whether 47 U.S. Code § 251 and 252 are technology neutral. (EXH 27, Bates No. 55) Therefore, CA argues that this Commission has the authority to require interconnection in any technically feasible manner between an ILEC and a CLEC. (EXH 27, Bates No. 55)

CA also argues that it believes that AT&T Florida is technically capable of providing SIP interconnection because another AT&T Florida entity currently offers the service, on a commercial basis, and is interconnected with AT&T Florida's network. (CA BR 148, TR 113) However, AT&T Florida has indicated that it currently does not offer interconnection trunking using SIP Voice-over IP or Voice-using IP and it does not have the capability to do so. AT&T Florida also argues that its network does not include any IP-capable equipment and that AT&T Florida is not interconnected with any carrier in IP format. (TR 441)

Despite CA's claims that AT&T Florida does have the technical capability to provide CA with IP interconnection, CA has not presented anything in the record that definitively confirms its assertions. In fact, the record suggests that AT&T Florida currently does not offer the service and is technically incapable of IP interconnection. However, staff believes that whether or not AT&T Florida is technically capable of providing SIP interconnection does not matter in this instance.

In this issue the parties have asked this Commission to determine whether the parties' ICA should include language that would require AT&T Florida to provide CA with interconnection trunking using SIP Voice-over-IP or Voice-using-IP in the future, if AT&T Florida begins offering the service to other carriers. The parties have not requested that the Commission determine whether AT&T Florida is technically capable of offering SIP interconnection to CA. Also, the parties have not asked this Commission to determined if § 251 and § 252 give the Commission the authority to require AT&T Florida to provide IP interconnection to CA.

Therefore, staff agrees with AT&T Florida's assertion that the Commission does not need to decide whether the Act requires IP interconnection to resolve this issue. (TR 442) Staff further agrees with AT&T Florida that since AT&T Florida does not currently offer interconnection trunking using SIP Voice-over-IP or Voice-using IP for local interconnection and is not planning on offering the service in the foreseeable future, CA's proposed language is not needed. If AT&T Florida does begin offering SIP interconnection at a later date, at that time CA could contact AT&T Florida to obtain the service.

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[55] AT&T Michigan filed a Complaint for Declaratory, Injunctive and other Relief (Case No. 1:14-cv-00416) with the United States District Court for the Western District of Michigan on April 15, 2014.

Staff notes that AT&T Florida will likely offer SIP interconnection, when available, via one of two methods. The service would be offered voluntarily via a commercial agreement, which this Commission does not regulate, or it would be offered via an ICA. If AT&T Florida is ordered at some point in the future to provide SIP interconnection via an ICA, CA already has the right to avail itself of the service in two ways. First, if AT&T Florida provided SIP interconnection to another CLEC, CA may be able to adopt that carrier's ICA to obtain the same rates and terms. CA would also be able to assert its rights, pursuant to the parties' agreed upon Intervening Law provisions within the parties' ICA, to acquire SIP interconnection from AT&T Florida. Section 24 of the General Terms and Conditions states in pertinent part:

> In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, **neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s) which the Parties have not yet fully incorporated into this Agreement**…or which may be the subject of further review. **If any action by any state or federal regulatory or legislative body or court of competent jurisdiction** invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) (Provisions) of the Agreement **and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, the Affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction** upon the written request of either Party in accordance with Section 20.0 above (Written Notice)

(Emphasis added) (EXH 2, p. 49)

AT&T Florida notes that this Commission determined in a previous arbitration proceeding (Order No. PSC-03-0805-FOF-TP, issued July 9, 2003, in Docket No. 011666-TP) that the parties' general change-in-law provision was adequate and that additional provisions within the ICA were not needed to address issues that may change in the foreseeable future. (TR 450-451, AT&T Florida BR 146-147) Currently, the FCC has not required ILECs to provide IP interconnection under Section 251. Nor has this Commission addressed the issue. However, if there were a change in law that required ILECs to provide IP interconnection to CLECs, staff agrees with AT&T Florida's argument that the parties Intervening Law provision is sufficient enough to ensure that CA would be able to obtain SIP interconnection from AT&T Florida. Staff also believes that the Commission's previous decision in the above mentioned Order further supports AT&T Florida's position regarding the change in law provision. Therefore, staff concludes that the parties' ICA should not include CA's language for SIP Voice-over-IP trunk groups.

Conclusion

Staff recommends ICA should not include CA's language providing for SIP Voice-over-IP trunk groups.

Issue 43i: Is the billing party entitled to accrue late payment charges and interest on unpaid intercarrier compensation charges? (Net. Int. § 6.13.7)

Recommendation: Yes. The billing party is entitled to accrue late payment charges and interest on unpaid intercarrier compensation charges. (Curry, Tan, Ames)

Position of the Parties

CA: CA believes that late payment charges and interest are mutually exclusive and may not be combined. If combined, CA believes that the resulting combination would be unfairly punitive and violate Florida usury laws.

AT&T Florida: Yes. The parties have agreed in the General Terms and Conditions that both late payment charges and interest charges apply to past due amounts. Florida law appropriately permits the imposition of both, and there is no reason to treat past due intercarrier compensation amounts differently than other past due amounts.

Staff Analysis: In this issue the parties are disputing whether the billed party is entitled to receive late payment charges and interest on unpaid intercarrier compensation charges. CA argues that late payment charges and interest charges are mutually exclusive and that combining the two is a violation of the Florida usury laws. (TR 60 EXH 28, Bates No. 80) AT&T Florida argues that late payment charges and interest are not mutually exclusive and that the laws in Florida recognize and allow the imposition of both charges simultaneously. (TR 253, AT&T Florida BR 148-149)

Parties' Arguments

CA

CA agrees that late payment charges in the amount of 18 percent APR (1.5% per month) shall apply to past due intercarrier compensation charges. However, CA does not agree that interest charges should be included in addition to the late payment charge. CA argues that late payment charges and interest are mutually exclusive and may not be combined. (TR 60, EXH 28, Bates No. 80) If combined, CA asserts that the resulting combination would be unfairly punitive and would violate Florida's usury laws in Chapter 687, F.S. Section 687.02(1), F.S., states in pertinent part:

> All contracts for the payment of interest upon any loan, advance of money, line of credit, or forbearance to enforce the collection of any debt, or upon any obligation whatever, at a higher rate of interest than the equivalent of 18 percent per annum simple interest are hereby declared usurious….

(EXH 28, Bates No. 80)

CA argues that the statute's clear intent is to limit charges arising from late payments to 18 percent. The addition of late payment charges on top of the maximum interest rate flouts the statute's intent by effectively adding two layers of charges (interest and late payment) for delinquent payments. Further, CA argues in <u>Chandler v. Kendrick</u>, 146 So. 551, 552 (Fla. 1933), the Florida Supreme Court explained "[t]he very purpose of statutes prohibiting usury is to bind the power of creditors over necessitous debtors and prevent them from extorting harsh and undue terms in the making of loans." CA asserts that although AT&T Florida is not extending a loan to CA, the proposed payment terms in the ICA meet the definition of "usurious contracts" because the combined total of the late payment charges and interest would exceed 18 percent. (EXH 28, Bates No. 80) Therefore, CA argues that AT&T Florida should not be entitled to assess late payment charges and interest on unpaid intercarrier compensation charges.

AT&T Florida

AT&T Florida argues that past due intercarrier compensation amounts, just like any other past due amounts, are subject to both late payment charges and interest. In the General Terms and Conditions section (Sections 11.3 and 11.4) of the parties' ICA, the parties both agreed that all past due amounts were subject to both interest and late payment charges. (EXH 2, pp. 33-34) However, AT&T Florida argues that CA has now taken the position, in connection with Network Interconnection Section 6.13.7, that past due intercarrier compensation amounts should only be subject to late payment charges and not interest. AT&T Florida argues that CA's current position regarding late payment charges and interest being mutually exclusive is not in line with what the parties have already agreed upon. (TR 252-253, AT&T Florida BR 148) Further, CA's assertion that combining interest and late payment charges violates Florida's usury limit of 18 percent is incorrect.

AT&T Florida argues that interest and late payment charges are not mutually exclusive. Interest is compensation for the time value of money, while late payment charges are intended as an incentive to encourage prompt payment. (TR 253, AT&T Florida BR 148-149) Section 687.03(2)(c), F.S., expressly allows for a late payment charge (which the statute calls a "delinquency charge") on top of the 18 percent interest limit, and states that the delinquency charge "shall not be deemed interest." Further, AT&T Florida argues that Florida courts have applied both interest and late payment charges simultaneously. In Verneret v. Foreclosure Advisors LLC, 45 So. 3d 889, 891 (3rd DCA 2010), the Third District noted that the trial court, in granting judgment for a principal amount owed, also entered a judgment for interest and late payment fees. (TR 252-253, AT&T Florida BR 149) Therefore, AT&T Florida believes that the billing party is entitled to accrue late payment charges and interest on unpaid intercarrier compensation charges.

Analysis

Staff agrees with AT&T Florida that late payment charges and interest are not mutually exclusive. Late payment charges and interest serve two distinct purposes. As noted by AT&T Florida, late payment charges are assessed as an incentive to encourage timely payments whereas interest is compensation for the time value of money. CA argues that combining interest and late payment charges is unlawful because it violates Florida's usury laws (specifically Section 687.02(1), F. S.) which caps the interest rate at 18 percent. (EXH 28, Bates No. 80) However, AT&T Florida pointed out that Section 687.03(2)(c), F.S., does allow for a delinquency charge in addition to interest. (AT&T Florida BR 149)

CA has already agreed to language in the parties ICA that provides for the assessment of both interest and late payment charges on past due amounts. Section 11.3 of the General Terms and Conditions states that a late payment charge shall be assessed for all late payments. (EXH 2, p.

33) Section 11.4 indicates that unpaid amounts will accrue interest from the day following the bill due date until paid. (EXH 2, p. 34) AT&T Florida argues that past due intercarrier compensation amounts are no different than any other past due amounts; therefore, CA should be liable for both late payment charges and interest if upon the resolution of a dispute CA is deemed responsible for the disputed amounts. (TR 252-253, AT&T Florida BR 148) Staff agrees with AT&T Florida that there is no difference between past due intercarrier compensation amounts and any other past due amount. Further, CA has not entered anything into the record that indicates otherwise. (TR 252-253, AT&T Florida BR 148)

Chapter 687 of Florida Statutes appears to pertain to contracts for interest payments on loans and lines of credit. It is unclear whether Florida usury law applies to the ICA, which CA points out, is not a contract for a loan. (CA BR 147, EXH 28 Bates No. 80) However, assuming arguendo that Florida usury laws do apply, we find AT&T Florida's argument to be persuasive. Section 687.03(2)(c), F.S., provides for a delinquency charge that may be charged separate and distinct from interest. Further, the decision in Verneret, at 891, also supports AT&T Florida's assertion that it is not unlawful to charge interest and late payment charges on past due balances. (TR 252-253; AT&T Florida BR 149) Therefore, staff agrees that the billing party is entitled to accrue late payment charges and interest on unpaid intercarrier compensation charges.

Conclusion

Staff recommends the billing party is entitled to accrue late payment charges and interest on unpaid intercarrier compensation charges.

Issue 43ii: When a billing dispute is resolved in favor of the billing party, should the billed party be obligated to make payment within 10 business days or 30 business days? (Net. Int. § 6.13.7)

Recommendation: When a billing dispute is resolved in favor of the billing party, the billed party should be obligated to make payment within 10 business days. (Curry)

Position of the Parties

CA: Resolved.

AT&T Florida: When a billing dispute arising from intercarrier compensation charges is resolved in the Billing Party's favor, ten business days (typically two weeks) is a reasonable time for the Billed Party to make payment.

Staff Analysis: CA argues that after a billing dispute arising from intercarrier compensation has been resolved, CA should be given 30 business days to pay the amount that CA was deemed responsible for. CA believes that 30 business days is needed so that it can secure financing to pay the amounts owed. (TR 60) AT&T Florida argues that 10 business days is a sufficient time period to make a payment after a billing dispute has been resolved. (AT&T Florida BR 149-150, TR 254)

Parties' Arguments

CA

CA has indicated that this issue is resolved. However, CA did raise the issues discussed below. Upon resolution of a billing dispute arising from intercarrier compensation charges, AT&T Florida has proposed language that would require CA to remit payment of the disputed amount within 10 business days of the resolution of the dispute if it was determined that CA was liable for the disputed charges. CA argues that 10 business days is not a sufficient length of time for it to secure financing and make a payment after a dispute has been resolved. CA argues that extending the timeframe from 10 business days to 30 business days will provide the company with adequate time to secure financing to pay the disputed amounts. Therefore, CA argues that AT&T Florida's proposed language should be rejected. CA believes that upon resolution of a dispute, the Non-Paying-Party should have 30 business days from the date of resolution to remit payment of the disputed amount. (TR 60)

AT&T Florida

AT&T Florida argues that once a billing dispute regarding intercarrier compensation has been resolved that the billed party (CA) should be required to render payment of the disputed amounts to the billing party (AT&T Florida) within 10 business days (at least two weeks). AT&T Florida asserts that following the resolution of a dispute, two weeks is an adequate period of time for the billed party to make a payment. AT&T Florida believes that CA's proposed time period of 30 business days (six weeks) is unreasonable. (AT&T Florida BR 149-150, TR 254)

AT&T Florida further argues that billing disputes can take months or longer to get resolved. However, during this time CA would know exactly what intercarrier compensation charges were accruing. Therefore, CA should take the appropriate steps to secure financing while it awaits the resolution of the dispute. AT&T Florida argues that CA should not be allowed additional time to secure financing for payments that it should have reasonably anticipated. Further, AT&T Florida argues that it should not have to wait an additional 30 business days, following the resolution of a dispute, to be paid what it is rightfully owed. (AT&T Florida BR 149-150, TR 254)

Analysis

Staff believes that 10 business days is an adequate length of time for the billed party to render payment to the billing party after the resolution of an intercarrier compensation billing dispute has been resolved. During a billing dispute CA would know what charges were accruing. Therefore, CA would have a general idea of the amount of the charges that it could potentially be responsible for upon resolution of the dispute. Staff agrees with AT&T Florida's argument that CA should not be given additional time to secure financing for the payment of charges that CA should have reasonably anticipated.

Since billing disputes can linger on for an extended period of time, CA would have ample time to secure financing while waiting for resolution of the dispute. Even if the dispute was resolved relatively quickly, CA should have anticipated the charges and made the necessary arrangements to secure payment. Further, staff agrees that it is unreasonable to require AT&T Florida to wait an additional 30 business days after a dispute has been resolved to receive payment. Therefore, staff agrees that when a billing dispute is resolved in favor of the billing party, that the billed party should be obligated to make payment within 10 business days.

Conclusion

Staff recommends when a billing dispute is resolved in favor of the billing party, the billed party should be obligated to make payment within 10 business days.

Issue 44: Should the ICA contain a definition for HDSL-capable loops? (UNE § 16.5)

Recommendation: Yes. Staff recommends that the ICA should contain a definition for HDSL-capable loops. (Fogleman)

Position of the Parties

CA: CA desires to clarify this point in the Agreement because AT&T has recently conflated the terms "DS1 loop", "HDSL loop" and "HDSL-capable loop" in order to unlawfully deny CLECs access to HDSL-capable loops in Tier 1 Wire Centers.

AT&T Florida: No. The ICA should not provide a separate definition for "HDSL-capable" loop. Whether CA orders an HDSL loop or an "HDSL-capable" loop, it receives exactly the same facility. CA's proposed definition is intended to try to evade the impairment thresholds under federal law by re-labeling HDSL loops as "HDSL-capable" loops.

Staff Analysis: In this issue, CA seeks to establish a definition for High-bit-rate Digital Subscriber Line (HDSL)-capable loops to distinguish their availability relative to HDSL loops. HDSL loops are considered to be DS1 (Digital Signal, Level 1) loops for purposes of the FCC's Triennial Review Remand Order (TRRO) impairment standard.[56] (TR 60, TR 116) The essence of the impairment standard is that a CLEC is competitively impaired without access to a given UNE (in this case, a DS1 loop). Conversely, in nonimpaired wire centers, a CLEC is not competitively impaired and the ILEC is not required to provide the UNE in question.

A DS1 loop is a digital local loop having a total digital signal speed of 1.544 megabytes per second.[57] (EXH 33, Bates No. 462; TR 567-568) HDSL is a technology that includes a copper loop that can be used to provide a DS1 loop. (EXH 33, Bates No. 462)

The TRRO capped the maximum number of DS1 loops a requesting telecommunications carrier may obtain at 10 DS1 loops in any single building in an impaired wire center.[58] An impaired wire center is one that does not have at least 60,000 business lines and at least four fiber-based collocators.[59] (TR 568) By comparison, an ILEC would not be required to provide DS1 loops to CLECs in a non-impaired wire center.

By recognizing the difference between an HDSL-capable loop and an HDSL loop, CA would have access to HDSL-capable loops in unimpaired wire centers. By comparison, AT&T Florida argues that there is no distinction between an HDSL loop and an HDSL-capable loop and CA's proposed language is an attempt to circumvent the TRRO's impairment standard. (TR 567)

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[56] The Triennial Remand Order or TRRO was a response to the decision in <u>USTA v. FCC</u> in which the D.C. Circuit Court vacated many of the provisions set forth in the original Triennial Review Order created in 2003. In general, the TRRO addressed network unbundling obligations of incumbent local exchange carriers. FCC 04-290, WC Docket No. 04-313, Unbundled Access to Network Elements, Order on Remand, released February 4, 2005.
[57] 47 C.F.R. § 51.319(a)(4)(i)
[58] 47 C.F.R. § 51.319(a)(4)(ii)
[59] 47 C.F.R. § 51.319(a)(4)(i)

Parties' Arguments

CA

CA states that there is a difference between an "HDSL-capable" loop and an "HDSL" loop, contrary to AT&T Florida's position. The effect of this difference relates to the ILEC's unbundling obligation for HDSL-capable loops in Tier 1 Wire Centers.[60] (TR 60) Specifically, CA asserts that under the FCC's TRRO, a Tier 1 wire center becomes nonimpaired for a CLEC for DS1 loop facilities. (TR 116) A DS1 loop is a 1.54 Mbps designed circuit including electronics. While HDSL is the technology used in some cases to provide the DS1 loop, HDSL is not the service being delivered. For instance, a DS1 loop provided over a copper loop may use HDSL or other technologies depending upon the electronics used. However, the same DS1 loop delivered over fiber would not be delivered using HDSL, because HDSL is a copper loop transport technology. (EXH 33, Bates No. 462)

According to CA, AT&T Florida can force CLECs to purchase special access DS1 circuits at a much higher cost than HDSL-capable circuits which should still be priced as a UNE.[61] (TR 116) CA further argues that HDSL-compatible circuits can be used by a CLEC to provide a variety of different services not just a DS1. (TR 116) CA's proposed language would define an HDSL loop as a conditioned loop, which includes electronics at each end, and may use intermediate repeaters to reach extended distances. By comparison an HDSL-capable loop is a copper loop without electronics capable of carrying HDSL signs at distances up to 11 kilofeet. (EXH 2, p. 250)

CA rebuffs AT&T Florida's assertion that it is attempting to create an artificial distinction between HDSL capable loops and HDSL loops in order to evade the caps that limit the number of DS1 loops that can be purchased at UNE rates.

CA notes that AT&T Florida's predecessor BellSouth filed comments ten years ago with the FCC asserting that access to such capable loops would continue in an attempt to convince the FCC to declare DS1 loops unimpaired in Tier 1 Wire Centers. (CA BR 149-151). CA argues AT&T Florida's position directly contradicts the position taken by its predecessor in an ex parte letter filed by BellSouth with the FCC in the 2003 Triennial Review proceeding. (CA BR 150, EXH 28, Bates Nos. 84, 118-120). CA contends AT&T Florida is the same legal entity, BellSouth Telecommunications, Inc., as its predecessor and therefore is prohibited from taking the current position under the doctrine of judicial estoppel. (CA BR 150-151)

AT&T Florida

AT&T Florida denies that there is a difference between an HDSL loop and an HDSL-capable loop. (TR 567) It notes that an HDSL Loop is simply a dry copper loop with certain design specifications that is capable of a signal speed of 1.544 Mbps, but the actual transmission speed is achieved when the appropriate electronic equipment is added to each end of the loop. (TR 567) AT&T Florida maintains that CA is responsible for adding the electronics. (TR 567)

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[60] Tier 1 wire centers are those incumbent LEC wire centers that contain at least four fiber-based collocators, at least 38,000 business lines, or both. Tier 1 wire centers also are those incumbent LEC tandem switching locations that have no line side switching facilities, but nevertheless serve as a point of traffic aggregation accessible by competitive LECs. 47 C.F.R. 51.319(d)(3)(i)

[61] A special access line is a dedicated line provided by a LEC to a customer for the customer's exclusive use.

AT&T Florida suggests that CA's goal in establishing a second definition is simply to evade the caps that limit the number of DS1 loops that can be purchased at UNE rates. AT&T Florida argues that HDSL loops are subject to the DS1 loop cap in an impaired wire center because HDSL loops are included in the C.F.R. definition of a DS1 loop. (TR 567) C.F.R. 51.319 defines a DS1 loop as a digital local loop having a total digital signal speed of 1.544 mbps. It is subject to the cap in an impaired wire center (i.e., one that does not have at least 60,000 business lines and at least four fiber-based collocators).

AT&T Florida's witness Kemp further argued that in a prior order,[62] the Commission states HDSL-capable loops are not the equivalent of DSl loops for evaluating wire center impairment and should not be counted as voice grade equivalents. AT&T Florida agrees with this. The Commission order further states, however, that provisioned HDSL loops that include the associated electronics, whether configured as HDSL-2-wire or HDSL-4-wire, should be considered the equivalent of a DS1 and counted as 24 business lines for determining wire center impairment in meeting part (3) of the business line count definition found in 47 C.F.R. § 51.5. AT&T Florida agrees with this as well. (EXH 38, Bates No. 738)

AT&T Florida rather claims that the Commission decision states: "Additionally, in those wire centers that are no longer DS1 impaired, BellSouth will not be required to offer an HDSL UNE. The Unbundled Copper Loop (UCL) UNE with Loop Makeup (LMU) and routine network modifications will allow CLECs to deploy HDSL electronics on the UCL." AT&T Florida agrees with this determination that AT&T Florida is not required to offer an HDSL UNE in wire centers that are no longer impaired. (EXH 38, p.42)

Witness Kemp concludes that in view of these Commission determinations, the loop that AT&T Florida provides is an HDSL capable loop; in other words, a dry loop that comes equipped with no electronics. AT&T Florida does not provide a loop with HDSL electronics. (EXH 38, Bates No. 738)

Analysis

AT&T Florida is not required to provide an HDSL loop (i.e., with electronics) because an HDSL loop is a specific technology. AT&T Florida is required to provide a DS1 loop in wire centers that are impaired. AT&T Florida can use any technology it likes to provision such a loop, including HDSL. In nonimpaired wire centers, AT&T Florida is not required to provide DS1 loops.

The FCC defines a DS1 loop as a digital local loop having a total digital signal speed of 1.544 megabytes per second.[63] Both parties state that, absent the electronics (a "dry" loop), the loop would not provide service with a signal speed of 1.544 megabytes per second. (EXH 38, Bates No. 738; EXH 28, Bates No. 83)

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[62] Order No. PSC-06-0299-FOF-TP, Issued April 17, 2006, in Docket No. 04-1269-TP, In re: Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc., Issue 5)

[63] 47 C.F.R. § 51.319(a)(4)

The need for a separate definition is based on the question of whether a "dry" loop is required in both impaired and nonimpaired wire centers. AT&T Florida contends it is not required to provide such loops in nonimpaired wire centers, and that all of what it calls "HDSL loops" do not include electronics. (TR 567) By comparison, CA argues that such loops, because they do not include electronics, are not DS1 loops. (EXH 26, Bates Nos. 22-24) As a result, those HDSL-capable loops should be available everywhere, because such "dry" loops cannot provide the DS1 signal speed defined by the FCC without electronics on both ends of the loop. (TR 116, EXH 26, Bates Nos. 22-24)

CA noted that prior to AT&T Inc.'s acquisition of BellSouth Corporation, BellSouth had encouraged the FCC to adopt the DS1 impairment criteria asserting that CLECs would continue to have access to HDSL-capable loops as an alternative to DS1 loops in nonimpaired wire centers. (EXH 28, Bates Nos. 84, 119) The ex parte comments of BellSouth note specific types of loops that would continue to be available in a nonimpaired wire center. BellSouth's comments note that CLECs could attach electronics to the ends of these loops to provide a service with transmission speeds equivalent to a DS1.[64] (EXH 28, Bates No. 119) Furthermore, BellSouth's ex parte letter is cited by the FCC in the TRRO as one of its reasons for selecting the geographic impairment standard for high-capacity loops. The FCC explicitly noted:

> The record also suggests that in some cases, competitive LECs might be able to serve customers' needs by combining other elements that remain available as UNEs. See BellSouth Dec. 8, 2004 DS1 Ex Parte Letter at 2 (stating that competitive LECs can use the following types of copper loops to provide DS1 service to customers: (1) 2-wire or 4-wire High Bit Rate Digital Subscriber Line (HDSL) Compatible Loops; (2) Asymmetrical Digital Subscriber Line Compatible Loops; (3) 2-wire Unbundled Copper Loops-Designed; or (4) Unbundled Copper Loop Non-Designed).[65]

Yet AT&T Florida states that the comments of BellSouth in the ex parte letter to the FCC do not represent its position on this issue. (EXH 50, Bates No. 1928)

Regardless of AT&T Florida's position, staff believes that the FCC included this language in the TRRO to specifically address that copper loop facilities will remain available. Staff believes the FCC consistently differentiates between HDSL-capable loops and DS-1 loops, which may or may not use HDSL-capable technology. This policy is delineated in the FCC's unbundling requirements:

> Copper loops. **An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the copper loop on an unbundled basis.** A copper loop is a stand-alone local loop comprised

[64] BellSouth identified the following unbundled loop facilities that will support DS1 service that would be available in areas where unbundling relief is granted: (1) 2-wire or 4-wire High Bit Rate Digital Subscriber Line (HDSL) Compatible Loops; (2) Asymmetrical Digital Subscriber Loops; (3) 2-wire Unbundled Copper Loops-Designed; or (4) Unbundled Copper Loop Non-Designed.

[65] FCC 04-290, WC Docket No. 04-313, Unbundled Access to Network Elements, Order on Remand, released February 4, 2005, ¶ 163 and footnote 454.

> entirely of copper wire or cable. **Copper loops include** two-wire and four-wire analog voice-grade copper loops, digital copper loops (e.g., DS0s and integrated services digital network lines), as well as **two-wire and four-wire copper loops conditioned to transmit the digital signals needed to provide digital subscriber line services**, regardless of whether the copper loops are in service or held as spares. The copper loop includes attached electronics using time division multiplexing technology, but does not include packet switching capabilities as defined in paragraph (a)(2)(i) of this section. The availability of DS1 and DS3 copper loops is subject to the requirements of paragraphs (a)(4) and (5) of this section. (47 C.F.R. §51.319(a)(1))

(emphasis added)

Staff believes this Commission has also used the same differentiation in its generic UNE proceedings. Regarding the Commission's prior Order (Order No. PSC-06-0299-FOF-TP), AT&T Florida notes that the Commission states that "Additionally, in those wire centers that are no longer DS1 impaired, BellSouth will not be required to offer an HDSL UNE. The Unbundled Copper Loop (UCL) UNE with Loop Makeup (LMU) and routine network modifications will allow CLECs to deploy HDSL electronics on the UCL." The full paragraph is listed below with specific text emphasized in **bold**:

> Issue 5 addresses whether **HDSL-capable** copper loops should be considered as the equivalent of DS1 loops for the purpose of evaluating impairment. The primary debate in this issue is whether **HDSL-capable** loops should be counted on a unit basis, or as voice-grade equivalents. BellSouth asserts that **HDSL-capable** loops should be counted as voice-grade equivalents, and CLEC parties disagree. We find that **HDSL-capable** loops are not the equivalent of DS1 loops for evaluating wire center impairment and should not be counted as voice grade equivalents. However, provisioned **HDSL loops that include the associated electronics**, whether configured as HDSL-2-wire or HDSL-4-wire, should be considered the equivalent of a DS1 and counted as 24 business lines for determining wire center impairment in meeting part (3) of the business line count definition found in 47 C.F.R. 551.5. Additionally, in those wire centers that are no longer DSl impaired, BellSouth will not be required to offer an **HDSL UNE**. The Unbundled Copper Loop (UCL) UNE with Loop Makeup (LMU) and routine network modifications will allow CLECs to deploy HDSL electronics on the UCL.

When taken in context, the paragraph distinguishes between HDSL-capable loops and HDSL loops. In the sentence prior to the quotation, AT&T Florida HDSL loops are specified as those "that include the associated electronics." Staff is unconvinced that this portion of the Order substantiates AT&T Florida's position. Further, staff notes that while the previous Order does state that BellSouth will not be required to offer an HDSL UNE and its UCL UNE will allow CLECs to deploy HDSL, AT&T Florida insists that it does not offer an HDSL loop. The UCL UNE is available in the proposed agreement, but to the extent that AT&T Florida insists that its

HDSL UNE loops are "dry" loops and contain no electronics, staff believes they should be treated the same as the UCL UNE and made available in all wire centers.

CA argued that judicial estoppel prohibits AT&T Florida from arguing its position because its predecessor BellSouth took a contrary position during the FCC's 2003 Triennial Review Proceeding. Judicial estoppel is an equitable doctrine that prevents parties from taking totally inconsistent positions in separate judicial, including quasi-judicial, proceedings.[66] In the present situation, judicial estoppel would not apply as this is not the same cause of action nor or the parties are not the same. Staff notes that the Commission does not have to address whether judicial estoppel is applicable if staff's recommendation on this issue is approved. Notwithstanding the inapplicability of judicial estoppel, staff is persuaded by CA's arguments to include a definition of HDSL-capable loops sound.

In summary, staff believes that the FCC's rules define DS1 loops in such a manner that a HDSL loop (i.e., with electronics) is clearly included in the meaning. By comparison, a loop that has all of the characteristics of an HDSL loop, absent the electronics (i.e., HDSL-capable loop), is not a DS1 loop because it cannot provide the specified bandwidth prescribed by the FCC's rule. This Commission's prior order supports a distinction between loops that meet the definition of a DS1 loop and a loop that falls short of that threshold. Therefore, staff believes that CA's proposal to include a definition of HDSL-capable loops is appropriate.

HDSL loops without electronics (dry loops) do not meet characteristics of a DS1 found in the FCC's rules. There is a need to distinguish between HDSL-capable loops and HDSL loops. To the extent that what AT&T Florida calls "HDSL loops" do not include electronics, those loops would effectively be "HDSL capable" loops and would be available in both impaired and non-impaired wire centers.

Conclusion

Staff believes that CA's proposed ICA language is appropriate for this issue. Staff recommends that the ICA should contain a definition for HDSL-capable loops.

[66] Blumberg v. USAA Cas. Ins. Co., 790So. 2d 1061, 1066 (Fla. 2001) (quoting Smith v. Avatar Properties, Inc., 714 So. 2d 1103, 1107 (Fla. 5th DCA 1998). In Blumberg, the Florida Supreme Court found that while judicial estoppel normally requires mutuality of parties, there are exceptions to the identity of parties when special fairness and policy considerations compel it. Staff believes that there are no special fairness or policy considerations that would warrant making an exception to this requirement

Issue 45: How should the ICA describe what is meant by a vacant ported number? (LNP § 3.1.4)

Recommendation: Staff recommends that Section 3.1.4 of the ICA read as follows:

> When a ported telephone number becomes vacant (e.g., the telephone number is disconnected), the ported telephone number will be released back to the carrier owning the switch (after aging if any) in which the telephone number's NXX-X is native.

(Beard)

Position of the Parties

CA: The agreement should simply require the parties to comply with FCC rules for number portability and the return of vacant ported numbers to the original carrier.

AT&T Florida: A ported number, just like any other phone number, is vacant when it is no longer in service with the end user to whose use it was assigned. At that point, the number reverts to the phone company that assigned it to that end user.

Staff Analysis: This issue addresses what the definition of a vacant ported number should be in paragraph 3.1.4 of the agreement. A ported number allows an end user to retain the same telephone number when changing from one service provider to another. This is known as service provider portability. The AT&T proposed draft language of Section 3.1.4 of the agreement states:

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

(emphasis added)

The CA proposed draft language of Section 3.1.4 of the agreement states:

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

(emphasis added)

> The verbiage in question is in the parenthesis of paragraph 3.1.4 of the agreement. AT&T Florida believes it should read (e.g., the telephone number is no longer **assigned to an** End User), while CA believes it should read (e.g., the telephone number is no longer **in service with the original** End User).

(emphasis added)

Parties' Arguments

CA

CA's proposed language states the telephone number must be returned to AT&T Florida only if the number is no longer assigned. (TR 61) CA witness Ray believes that AT&T Florida's proposed definition would prohibit it from allowing business end users to transfer their telephone number to a new owner if the business is sold to a new owner who wants to keep the name of the business and the existing telephone number. (EXH 27, Bates No. 57) Witness Ray asserts that AT&T Florida would require the new business owner to switch back to AT&T Florida to keep the business's phone number. (EXH 33, Bates No. 427) Witness Ray believes the end user has the right to move the number at its option until that number is disconnected. (TR 116)

AT&T Florida

AT&T Florida's believes that a telephone number is considered vacant when it is no longer in service with the original end user. (TR 255) AT&T Florida witness Pellerin believes that when the end-user no longer subscribes to telephone exchange service using the ported telephone number, the number becomes vacant and must be released back to the NXX code assignee for eventual reuse. Witness Pellerin asserts CA's proposed language would improperly allow CA to maintain control of the ported number as long as CA used it for any end user. (TR 257) In response to an assertion made by CA witness Ray, staff asked witness Pellerin if when a business is acquired and the new owner keeps the name of the business, the business phone number could be conveyed to the new owner. Witness Pellerin responded yes, and went on further to say that when that scenario takes place, AT&T Florida would not even know because there would be no change in the business name. (EXH 47, Bates No. 1792)

Analysis

Telephone numbers are assigned to carriers by the North American Numbering Plan Administrator (NANPA) in blocks of 10,000 numbers, known as NXXs. NANPA holds overall responsibility for the neutral administration of North American Numbering Plan (NANP) numbering resources, including assignment of NANP resources, and coordination of area code relief planning and collection of utilization and forecast data. NANP numbers are ten-digit numbers consisting of a three-digit Numbering Plan Area (NPA) code, commonly called an area code, followed by a seven-digit local number. The format is usually represented as:

NXX-NXX-XXXX

where N is any digit from 2 through 9 and X is any digit from 0 through 9.

When a carrier institutes service for a new customer, it takes a telephone number from its inventory to provide the service. If that customer subsequently decides to change service providers and keep the same number, the number is ported to the new provider but the number block assignment stays with the original provider and its switch. (AT&T Florida BR, pp. 145-146)

Staff referred to the North American Numbering Council (NANC)[67] Local Number Portability Architecture & Administrative Plan which has the following definition of "Disconnected Telephone Number:"

> When a ported number is disconnected, that telephone line number will be released (Snap-back), after appropriate aging, back to the original Service Provider assigned the NXX in the Local Exchange Routing Guide.

(EXH 42, Bates No. 1488)

CA witness Ray was asked if he agrees that a vacant ported number is a ported number that is disconnected and aged,[68] then released or snapped back to the original service provider assigned the NXX in the Local Exchange Routing Guide (LERG). He states yes. (EXH 46, Bates No. 1605) AT&T Florida witness Pellerin was also asked if she agrees that a vacant ported number is a ported number that is disconnected and aged, then released or snapped back to the original service provider assigned the NXX in the LERG. She also replies yes. (EXH 47, Bates No. 1792)

Both parties agree in depositions that the definition of vacant ported number is a ported number that is disconnected and aged, then released or snapped back to the original service provider assigned the NXX in the LERG. Staff modified both parties' language in its recommendation.

Conclusion

Staff recommends that Section 3.1.4 of the ICA state the following:

> When a ported telephone number becomes vacant (e.g., the telephone number is disconnected), the ported telephone number will be released back to the carrier owning the switch (after aging if any) in which the telephone number's NXX-X is native.

[67] The North American Numbering Council (NANC) is a Federal Advisory Committee that was created to advise the Federal Communications Commission on numbering issues and to make recommendations that foster efficient and impartial number administration.

[68] Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no more than 90 days. Numbers previously assigned to business customers may be aged for no more than 365 days.

Issue 46i: Should the ICA include limitations on the geographic portability of telephone numbers? (LNP § 3.2.1)

Recommendation: Yes. Staff recommends the ICA include limitations on the geographic portability of telephone numbers. (Beard)

Position of the Parties

CA: No. This was an important issue during the time of dial-up modems—that time has passed. Now there is no legitimate reason why this language needs to be included in the Agreement. It is an attempt by AT&T to restrict the types of service and geographic areas of CA's network.

AT&T Florida: Yes. The FCC's rules require service provider portability, but not location portability.

Staff Analysis: The term "number portability" means the ability of users of telecommunications services to retain, **at the same location** [emphasis added], existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. (EXH 42, Bates No. 1484) This issue addresses the following geographic portability of telephone numbers verbiage proposed by AT&T Florida in paragraph LNP 3.2.1 of the agreement:

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

Parties' Arguments

CA

CA believes that it is well settled that subscribers may port numbers regardless of rate center designation as long as the gaining provider's network can support the service. CA witness Ray asserts that the FCC has affirmed the use of "nomadic VoIP" which involves local telephone numbers which are used outside of their original geographic rate center. (TR 61) Witness Ray believes that AT&T Florida is framing this issue in terms of the old dial-up reciprocal compensation battles from 15 years ago, and has nothing to do with intercarrier compensation or call routing. Witness Ray goes on to say that if a subscriber wants to keep his number when he moves to a new area, CA is permitted to let him do that per FCC number portability rules. (TR 117) When asked if FCC rules require location portability, witness Ray said he would rely on counsel, but he would respond yes. (EXH 27, Bates No. 59)

AT&T Florida

AT&T Florida witness Neinast states Florida's network is not capable of supporting portability outside of a rate center, saying both the network itself and AT&T Florida's operational support systems (OSS) are programmed to port only within a rate center, and both the network and the OSS would need to be significantly modified, at substantial cost, to enable portability from one rate center to another. According to witness Neinast, AT&T Florida's network includes a separate switching system for each rate center, and the software table for any given local switch includes only phone numbers with an NPA-NXX associated with the rate center that switch serves. Witness Neinast continues by stating the OSS programming can handle ports only within a rate center, and would have to be modified significantly to accommodate inter-rate center ports. (EXH 37, Bates No. 693) When asked if FCC regulations for number portability allow porting without regard to rate center, witness Neinast states no, the FCC has not ordered carriers to port numbers from one rate center to another. (TR 505)

Analysis

The term "location portability" means the ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when moving from one physical location to another. (EXH 42, Bates No. 1484) The Act does not require local exchange companies to provide location portability. The Act's requirement to provide number portability is limited to situations when users remain "at the same location," and "switch from one telecommunications carrier to another," and does not include location portability. (FCC 96-286, ¶181)

Although non-geographic number portability is not presently required, the North American Numbering Council Local Number Portability Administration Working Group released a white paper on February 19, 2015, which addressed the future prospect of non-geographic number portability. Non-geographic number portability is the ability to port telephone numbers without regard to the current rate center requirements. A non-geographic number portability team was established whose mission is to identify the issues and impacts to being able to port telephone numbers anywhere in the United States. (EXH 43, Bates No. 1503)

In today's public switched telephone network environment, service providers port numbers while maintaining the number's original rate center designation following the port, regardless of whether the service providers are wireline, wireless or VoIP. (TR 505) Based on staff's analysis, staff believes that AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that yes, the ICA should include limitations on the geographic portability of telephone numbers.

Issue 48A: Should the provisioning dispatch terms and related charges in the OSS Attachment apply equally to both parties? (OSS § 6.4)

Recommendation: No. The provisioning dispatch terms and related charges in the OSS Attachment should not apply equally to both parties. (Curry)

Issue 48B: Should the repair terms and related charges in the OSS Attachment apply equally to both parties? (OSS § 7.12)

Recommendation: No. The repair terms and related charges in the OSS Attachment should not apply equally to both parties. (Curry)

Position of the Parties

CA: Yes, on both sub-issues. AT&T's proposed language does not provide parity. It requires CA to compensate AT&T when CA causes AT&T to dispatch a technician and the problem is not within AT&T's network, while denying CA the same reasonable terms.

AT&T Florida: No. Reciprocity in OSS § 6.4 is inappropriate because CA provides no products or services to AT&T. CA should follow the trouble-reporting process set forth in OSS § 7.6 to isolate any problems on AT&T's side of the network.

Staff Analysis: This issue deals with the reciprocity of provisioning (Issue 48A) and repairs (Issue 48B) and related charges in the OSS Attachment of the ICA. The parties have agreed to AT&T Florida's proposed language in OSS § 6.3 and OSS § 7.11, which would permit AT&T Florida to bill CA if AT&T Florida must dispatch technicians more than once for ICA services related to provisioning (OSS § 6.3) and repair and maintenance (OSS § 7.11) due to CA providing incorrect or incomplete information to AT&T Florida. (TR 122, EXH 2 pp. 167-168)

However, despite having agreed to AT&T Florida's proposed language, CA argues that the language lacks parity. CA believes that the provisions in AT&T Florida's proposed language should equally apply to both parties. (CA BR 161, TR 63) Therefore, CA has proposed additional language in OSS § 6.4 and OSS § 7.12, which is the subject of this dispute, that CA believes would make the provisioning and repair requirements in AT&T Florida's proposed language reciprocal. (CA BR 161, TR 63) AT&T Florida argues that reciprocity of the provisioning and repair requirements is inapplicable because the parties' relationship is not reciprocal. (AT&T Florida BR 162) Therefore, AT&T Florida believes that CA's proposed language should be rejected.

Parties' Arguments

CA

In this issue the parties are disputing ICA language regarding provisioning dispatch and repair terms and related charges in the OSS Attachment of the ICA. The issue has been divided into two interrelated parts that will be addressed concurrently. Issue 48A addresses the provisioning dispatch terms and Issue 48B addresses the repair terms.

While CA does not oppose AT&T Florida's proposed language in OSS § 6.3 and OSS § 7.11, CA believes that the language lacks parity. (CA BR161; TR 63) OSS § 6.3 addresses ordering and provisioning. It authorizes AT&T Florida to charge CA if AT&T Florida must dispatch to the End User's location more than once for provisioning of ICA Services due to incorrect or incomplete information provided by CA. (EXH 2, p. 167; AT&T Florida BR 161) OSS § 7.11 addresses repair and maintenance issues. This language provides that AT&T Florida may charge CA if AT&T Florida must dispatch to an End User's location more than once for repair or maintenance due to incorrect or incomplete information provided by CA. (EXH 2, p. 168; AT&T Florida BR 161)

CA argues that AT&T Florida's proposed language requires CA to compensate AT&T Florida whenever CA causes AT&T Florida to dispatch a technician to fix a problem that is not within AT&T Florida's network. However, the language does not require AT&T Florida to compensate CA when AT&T Florida causes CA to dispatch a technician to fix a problem that AT&T Florida was suppose to resolve. Instead, CA argues that it must absorb all of the costs of AT&T Florida's error. (TR 63) CA believes that each party should be required to compensate the other party for wasting each other's resources. Therefore, the terms in AT&T Florida's proposed language should equally apply to both AT&T Florida and CA. (CA BR 161, TR 63) For this reason, CA has proposed additional language in OSS § 6.4 and OSS § 7.12 that CA believes would make the provisioning and repair requirements in AT&T Florida's proposed language reciprocal.

CA's proposed language in OSS § 6.4 and OSS § 7.12 provide that CA may charge AT&T Florida when CA must dispatch to the End User's location to resolve an issue that is solely caused by AT&T Florida, its employees, or its contractors and agents. CA gives the example of AT&T Florida tampering with CA's End User's service and AT&T Florida falsely reporting that services were properly installed and or repaired. (EXH 2, pp. 167-168) CA acknowledges that AT&T Florida never orders services from CA and that CA never dispatches on behalf of AT&T Florida. However, CA argues that despite this there are situations in which CA may have to dispatch a technician based on false information provided to CA by AT&T Florida. (TR 121) CA argues that AT&T Florida often reports to CLECs that a service has been installed or repaired when in fact AT&T Florida has not installed or repaired the service. As a result, the CLEC must then dispatch its own technician to its End User's location, to find that the service was not installed or repaired at all. (TR 63, CA BR 161)

CA asserts that the most common scenario is for AT&T Florida to report to the CLEC that no trouble was found on a trouble ticket. However, the CLEC later determines after rolling a truck to the customer's premises that AT&T Florida was wrong. (TR 121) As a result, AT&T Florida has to dispatch "again" to the End User's location to address the issue. CA argues that AT&T Florida should reimburse CA for wasting its time and resources. CA believes that its proposed language would ensure that AT&T Florida was held to the same standard to which AT&T Florida's language holds CA. CA adds that its proposed language also includes a rate parity requirement that would prevent CA's rate from exceeding AT&T Florida's rate. (CA BR 161, TR 63, TR 121)

Further, CA disagrees with AT&T Florida's argument that CA's proposed language contains no limits and would allow CA to solely determine that an issue was caused by AT&T Florida and allow CA to charge AT&T Florida for all dispatches that CA attributes as AT&T Florida's errors. (TR 121, CA BR 162) AT&T Florida's proposed language limits AT&T Florida's ability to charge CA only in situations in which incorrect or incomplete information, such as address or contact name/number, has been provided by CA and the incorrect/incomplete information resulted in an additional AT&T Florida dispatch. (CA BR 162) CA argues that its proposed language is a "literal cut-and-paste" of AT&T Florida's language, making the terms reciprocal, with the added proviso "such as AT&T tampering with CLEC End User's ICA Service, AT&T falsely reporting that ICA Service has been properly installed when it has not, or AT&T falsely reporting that ICA Service has been repaired when it has not." (TR 121, CA BR 162) CA argues that if one party provides false information to the other resulting in a dispatch, the falsifying party should be held financially responsible for the dispatch. Therefore, CA believes that this Commission should approve CA's proposed language. (CA BR 162)

AT&T Florida

AT&T Florida argues that the provisioning, repair and maintenance and related terms as set forth in AT&T Florida's proposed language in OSS § 6.3 and OSS § 7.11 should not be reciprocal because the parties' relationship is not reciprocal. (AT&T Florida BR 162) CA purchases products and services from AT&T Florida, but AT&T Florida does not purchase products and services from CA. (TR 568-569, AT&T Florida BR 162) CA provides AT&T Florida with addresses and contact information submitted to AT&T Florida through service orders, but AT&T Florida never submits service orders to CA. (TR 569) Further, upon CA's request, AT&T Florida dispatches technicians to work on CA's facilities. (EXH 36, Bates No. 601) However, CA does not dispatch technicians on AT&T Florida's behalf. (TR 568-569, AT&T Florida BR 162) AT&T Florida argues that in this context CA's proposed reciprocity is meaningless. Therefore, CA's proposed language in OSS § 6.4 and OSS § 7.12 should be rejected.

Further, AT&T Florida argues that CA's accusation that AT&T Florida often incorrectly reports that service has been installed or repaired are untrue and unsubstantiated. So are CA's claims that AT&T Florida "tampers" with CA's End User's service. AT&T Florida believes that CA's proposed ICA language which states that "AT&T [is] tampering with CA End User's service" is inflammatory and should not be included in the ICA. (EXH 36, Bates No. 601: AT&T Florida BR 162) Further, AT&T Florida asserts that CA's alleged concern that it will have to dispatch technicians to End User locations due to the fault of AT&T Florida is misplaced.

AT&T Florida argues that it performs due diligence to assure that the services ordered by CA meet the service parameters for the type of services ordered, including testing for potential maintenance and repair issues. AT&T Florida asserts that CA should perform its own due diligence to isolate the trouble prior to dispatching its technician. (EXH 36, Bates No. 602) Further, AT&T Florida argues that CA can avoid being required to dispatch its own technicians by simply following the trouble-shooting process set forth in OSS § 7.6. (AT&T Florida BR 162, EXH 2, p. 168)

OSS § 7.6 states that a "CLEC must test and isolate trouble to the AT&T-21STATE network before reporting the trouble to the Maintenance Center. Upon request from AT&T-21STATE at the time of the trouble report, CLEC will be required to provide the results of the CLEC test isolating the trouble to the AT&T-21STATE network." (EXH 2, p. 168) AT&T Florida argues that if CA would follow the process in OSS § 7.6 to isolate the trouble and the trouble is on AT&T's side of the network, CA would not need to dispatch a technician.

Instead, CA would report the trouble to AT&T Florida by submitting a trouble report to the AT&T Maintenance Center. (AT&T Florida BR 162) AT&T Florida would then dispatch its own technicians, if necessary. AT&T Florida argues that CA would not be subject to the dispatch charges under OSS § 6.3 unless the error on AT&T Florida's side of the network was caused by CA providing "incorrect or incomplete information" to AT&T Florida. If the trouble is not on AT&T Florida's side of the network, then CA would be responsible for handling the issue according to CA's own methods and procedures. (AT&T Florida BR 162-163; EXH 36, Bates Nos. 601-602)

Further, AT&T Florida argues that the language that CA has proposed in OSS § 6.4 and OSS § 7.12 attempts to expand the scope of AT&T Florida's proposed language in OSS § 6.3 and OSS § 7.11 beyond ordering, provisioning, and repair. AT&T Florida asserts that under the guise of the OSS Attachment, CA wants this Commission to grant it the ability to bill AT&T Florida for any dispatch by CA based simply on CA's claim that AT&T Florida caused the problem. AT&T Florida argues that unlike the language in OSS § 6.3 and OSS § 7.11, CA's proposed language in OSS § 6.4 and OSS § 7.12 contains no limits and enables CA alone to determine that an issue was solely caused by AT&T Florida and bill AT&T Florida for all dispatches that CA attributes to AT&T Florida's error. (TR 569-572; AT&T Florida BR 163-164)

AT&T Florida's proposed language in both OSS § 6.3 and OSS § 7.11 of the OSS Attachment limits AT&T Florida's ability to bill CA to include only situations in which incorrect or incomplete information, such as address, or contact name/number, has been provided by CA and the incorrect/incomplete information resulted in an additional AT&T Florida dispatch. (TR 569-572; AT&T Florida BR 163-164) Further, AT&T Florida argues that CA's proposed language would create a disincentive for CA to perform its own due diligence to isolate provisioning and repair issues prior to reporting the trouble. (AT&T Florida BR 164) Therefore, AT&T Florida believes that CA's proposed language should be rejected.

Lastly, AT&T Florida argues that the parties' interconnection agreement is "subject to the Commission's Service Quality Measurement Plan (SQM), and Self Effectuating Enforcement Mechanism (SEEM) as set forth in Docket No. 000121A-TP. The installation and repair measures document AT&T Florida's performance for all CLECs. Therefore, if there is a systemic problem, as compared to a few "misses,"" it can be addressed under the SQM. (EXH 36, Bates No. 602)

Analysis

The parties are disputing the addition of CA's proposed language in OSS § 6.4 and OSS § 7.12 of the OSS Attachment of the ICA. CA argues that its proposed language should be included in the parties ICA because the language would make the terms in AT&T Florida's proposed language reciprocal. CA argues that aside from the proviso that CA included, its proposed language in OSS § 6.4 and OSS § 7.12 is a "literal cut-and-paste" of the language proposed by AT&T Florida in OSS § 6.3 and OSS § 7.11. (TR 121; CA BR 162)

AT&T Florida proposed the following language for OSS § 6.3 and OSS § 7.11. Both parties have agreed to this language as follows:

OSS § 6.3

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

OSS § 7.11

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

CA's proposed language for OSS § 6.4 and OSS § 7.12 states:

OSS § 6.4

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

OSS § 7.12

> In the event CLEC must dispatch to the End User's location to resolve an issue solely caused by AT&T-21STATE's employees, contractors or agents (such as AT&T tampering with CLEC End User's ICA Service, AT&T falsely reporting that ICA Service has been properly installed when it has not, or AT&T falsely reporting that ICA Service has been repaired when it has not) CLEC will bill

> AT&T-21STATE and AT&T-21STATE shall pay for each dispatch required to resolve the problem caused by AT&T. The charge for each such dispatch shall not exceed the then-current AT&T-21STATE Trouble Determination Charge.

Staff disagrees with CA's argument that its proposed language is a "literal cut-and-paste," minus CA's proviso, of AT&T Florida's language. (TR 121, CA BR 162) Unlike AT&T Florida's proposed language, which only permits AT&T Florida to charge CA when AT&T Florida must dispatch "more than once" due to incorrect or incomplete information provided by CA, CA's proposed language offers no such provision. Staff believes that CA's proposed language implies that it may bill AT&T Florida for "any" (or all) dispatches to the End User's location to resolve an issue that CA deems AT&T Florida is solely responsible for. CA's language does not specify that it will only charge AT&T Florida if it dispatches technicians for provisioning and repair issues, which are the subject of AT&T Florida's proposed language in OSS § 6.3 and OSS § 7.11. Therefore, staff agrees with AT&T Florida's argument that CA's proposed language attempts to expand the scope of AT&T Florida's proposed language beyond ordering, provisioning, and repair. (TR 569-572, AT&T Florida BR 163-164)

Further, staff believes the nature of the parties' relationship is not reciprocal. CA acknowledges that AT&T Florida never orders services from CA and that CA never dispatches on behalf of AT&T Florida. (TR 121) Therefore, staff agrees with AT&T Florida's argument that the terms set forth in AT&T Florida's proposed language in OSS § 6.3 and OSS § 7.11 should not be reciprocal. In regards to CA's claims that it is forced to dispatch a technician because AT&T Florida often reports to CLECs that a service has been installed or repaired when in fact AT&T Florida has not installed or repaired the service, based on the information that CA has entered into the record for this proceeding, staff concludes that CA's claims are void. (TR 63, CA BR 161)

Staff agrees with AT&T Florida's argument that CA's added proviso in its proposed language: "such as AT&T tampering with CLEC End User's ICA Service, AT&T falsely reporting that ICA Service has been properly installed when it has not, or AT&T falsely reporting that ICA Service has been repaired when it has not" may be viewed as inflammatory. (TR 121, CA BR 162, EXH 36, Bates No. 601, AT&T Florida BR 162) Based upon staff's analysis of this issue staff believes that CA's proposed language in OSS § 6.4 and OSS § 7.12 should not be included in the parties' ICA. Therefore, the provisioning dispatch and the repair terms and related charges in the OSS Attachment should not apply equally to both parties.

Conclusion

For Issue 48A, staff recommends the provisioning dispatch terms and related charges in the OSS Attachment should not apply equally to both parties.

For Issue 48B, staff recommends the repair terms and related charges in the OSS Attachment should not apply equally to both parties.

Issue 50: In order for CA to obtain from AT&T Florida an unbundled network element (UNE) or a combination of UNEs for which there is no price in the ICA, must CA first negotiate an amendment to the ICA to provide a price for that UNE or UNE combination? (UNE § 1.3)

Recommendation: Yes. In order for CA to obtain from AT&T Florida an unbundled network element (UNE) or a combination of UNEs for which there is no price in the ICA, CA must first negotiate an amendment to the ICA to provide a price for that UNE or UNE combination. (Fogleman)

Position of the Parties

CA: No. CA believes that AT&T is required to offer all UNEs equally to all CLECs in Florida, so CA is entitled to order any UNE which AT&T is required to provide. AT&T unlawfully omitted certain UNEs from its pricing attachment without notice to CA during the negotiation period.

AT&T Florida: Yes. Under the 1996 Act–and agreed language in the ICA–CA can only obtain UNEs from AT&T pursuant to the rates, terms and conditions in its ICA. CA's proposed language is contrary to controlling federal law, because it would allow CA to "pick and choose" terms from another ICA.

Staff Analysis: CA's proposed contract language is intended to address its concern regarding UNEs that become available in the future and in the event a UNE was accidentally omitted from the pricing schedule. (EXH 33, Bates No. 466) CA states that its proposed language is not intended to allow it to "pick-and-choose" from other ICAs. (TR 122) AT&T Florida believes that CA's proposed language, regardless of intent, violates the FCC's "all-or-nothing" rule by allowing CA to amend within 30 days any UNE or UNE combination for which a price does not exist in its ICA from among any current commissioner approved ICAs. (TR 573) The "pick-and-choose" rule was reversed by the FCC in 2004.[69] The "pick-and-choose" rule allowed a negotiating carrier to pick the most favorable individual provisions of state-approved ICAs without being required to accept the terms and conditions of the entire agreement.[70] In July 2004, the FCC adopted a new "all-or-nothing" rule regarding ICAs.[71] The "all-or-nothing" rule requires a requesting carrier seeking to avail itself of the terms in another carrier's ICA to adopt the agreement in its entirety, taking all rates, terms, and conditions from the adopted agreement.[72]

[69] FCC 04-164, CC Docket No. 01-338, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Second Report and Order, released July 13, 2004.
[70] Ibid.
[71] Ibid.
[72] Ibid.

Parties' Arguments

CA

CA believes that it should be able to order any element which AT&T Florida is required to provide as a UNE, whether or not it is listed in the ICA. (TR 64) CA does not desire to select elements or prices from another ICA (i.e., "pick and choose"). (TR 122) CA's proposed language is intended to address UNEs that become available in the future, or in the event a UNE was accidentally omitted from the pricing schedule in the ICA. (EXH 33, Bates No. 466)

CA seeks to have access to new UNEs without the need for a new ICA to be arbitrated. CA understands that the Commission generally approves new UNEs and pricing for UNEs on a state-wide basis for all CLECs at once. CA desires to be clearly entitled to such UNEs when the Commission decides to make them available or sets a price. (EXH 28, Bates No. 91)

As an alternative, CA proposes that the Commission order that all UNEs for which the Commission has set a price in the most recent generic proceeding be placed into the pricing attachments to become part of the ICA. If AT&T Florida is compelled to do that, CA contends that neither party's language should be required for this issue because there would be no UNEs left–out for CA to request later. In addition, CA could invoke the change-of-law provision to get any new UNEs that may become available in the future. (CA BR 161)

AT&T Florida

AT&T Florida believes that the language CA proposes would allow it to obtain a UNE or UNE combination from AT&T Florida at the price that appears in another carrier's ICA if CA's ICA includes no price for the UNE or UNE combination. (TR 573) AT&T Florida contends that this would be contrary to controlling federal law for two reasons. First, once a CLEC has an ICA with an ILEC, AT&T Florida believes the only obligations to the CLEC with respect to the requirements of Section 251 of the Act–including interconnection, UNEs and resale–are the obligations set forth in the ICA. (TR 574) Second, CA's proposal violates the FCC's "all-or-nothing" rule that prohibits CLECs from adopting only selected parts of an ICA. (TR 574) CA has the burden to include and negotiate all of the UNEs that it may want during the term of its ICA. (EXH 50, Bates No. 1940)

AT&T Florida states that if a network element to which current law does not require ILECs to provide access on an unbundled basis were made subject to unbundling as a result of a change in law, AT&T Florida would agree to an appropriate amendment to the ICA pursuant to the General Terms and Conditions Section 24.1. (EXH 38, Bates No. 742)

Analysis

CA asserts that its proposed contract language addresses the future availability of UNEs and UNEs that may have been accidentally omitted from the pricing list. (EXH 33, Bates No. 466) CA proposes the following language for Section 1.3 of the UNE attachment:

> If CA orders any UNE or UNE combination for which a price does not exist in this agreement, but for which a price does exist in any then-current Commission-Approved AT&T-21STATE Interconnection Agreement, then CA shall be entitled to obtain that UNE or UNE combination on a non-discriminatory basis

> under the same rate and terms. The Parties shall execute an amendment within thirty (30) days of request from CA for such an amendment, and the UNE(s) shall be available to CA for ordering within five (5) days after execution of the amendment.

Staff believes CA's proposed language violates the FCC's "all-or-nothing" rule by allowing CA to amend within 30 days any UNE or UNE combination for which a price does not exist in its ICA from among any current Commission-approved ICAs.[73] If there is a change of law that affects the availability of a network element, AT&T Florida has agreed to an appropriate amendment to the ICA pursuant to the General Terms and Conditions Section 24.1. (EXH 38, Bates No. 742) To the extent that change of law is not clear, then the issue can be negotiated or arbitrated.

Staff notes that the UNEs and associated prices within this Commission's most recent generic proceeding are a public record. Thus, to the extent that CA suspects that there is a missing UNE and associated price, CA could have reviewed the related order itself.[74] Finally, if either party is unable to get the other to agree to file an amendment for any reason, and that party believes the refusal to amend the agreement is an anticompetitive act, a complaint may be filed with this Commission pursuant to Section 364.16(2), F.S.[75] Staff believes that AT&T Florida's proposed ICA language is appropriate for this issue.

Conclusion

Staff recommends in order for CA to obtain from AT&T Florida an unbundled network element (UNE) or a combination of UNEs for which there is no price in the ICA, CA must first negotiate an amendment to the ICA to provide a price for that UNE or UNE combination.

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[73] FCC 04-164, CC Docket No. 01-338, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Second Report and Order, released July 13, 2004.

[74] The Commission previously approved AT&T Florida's UNE rates in Docket No. 990649-TP, Order No. PSC-01-2051-FOF-TP and Docket No. 990649A-TP, Order No. PSC-02-1311-FOF-TP. Collocation rates were previously approved in Dockets Nos. 981834-TP and 990321-TP, Orders Nos. PSC-04-0895-FOF-TP and PSC-04-0895A-FOF-TP.

[75] Order No. PSC-13-0185-FOF-TP, Issued May 1, 2013, in Docket No. 090538-TP, In re: Amended Complaint of Qwest Communications Company, LLC against MCimetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination,. p. 7.

Issue 51: Should AT&T Florida be required to prove to CA's satisfaction and without charge that a requested UNE is not available? (UNE § 1.5)

Recommendation: No. Staff recommends that AT&T Florida should not be required to prove to CA's satisfaction and without charge that a requested UNE is not available, however, AT&T Florida's proposed language should be amended to refund the manual Loop Make Up report fee when it is inconsistent with the automated system. (Fogleman)

Position of the Parties

CA: Yes. CA believes its proposed ICA language is reasonable to prevent AT&T from arbitrarily and incorrectly denying CA's UNE orders and claiming that no facilities exist when in fact they do exist, to which CA would otherwise have no recourse.

AT&T Florida: No. For each UNE order received, AT&T determines in good faith whether the necessary facilities are available. If CA disputes AT&T's determination, CA can invoke dispute resolution and other remedies. CA's language would unreasonably require AT&T to prove unavailability to CA's satisfaction, with CA being the sole arbiter of satisfaction.

Staff Analysis: At issue is the accuracy of the Loop Make Up systems offered by AT&T Florida. AT&T Florida asserts that its employees will use the same tools to verify the availability of UNEs to which CA would have access. By comparison, CA proposes to include language that is intended to open communications between the parties and potentially include site location visits to resolve disputes.

Parties' Arguments

CA

CA argues its proposed language would allow CA to challenge instances where AT&T Florida denies CA UNE facilities because AT&T Florida's system indicates that the requested facilities are not available. CA can use a mechanized Loop Make Up (at no charge) or request a manual Loop Make Up (for a fee) to determine if necessary elements are available. (TR 123) CA's language would require AT&T Florida to reasonably prove at no charge to CA's satisfaction that the facilities do not exist or are all in use. CA provided an example of this issue affecting Terra Nova, a company that CA's witness Ray is also employed by, when Terra Nova attempted to order an HDSL-capable loop. (EXH 46, Bates Nos. 1524, 1616, 1649-1734) AT&T Florida has not refuted this claim. (CA BR 162)

CA states it would be satisfied, in most cases, if AT&T Florida would make an engineer available to CA via telephone who would explain why facilities that CA thought are available were not available. (EXH 31, Bates No. 229) In the most extreme cases, a vendor may then be required to meet with the parties to visually inspect the facilities that CA proposes to use. CA affirms that such a vendor meeting would satisfy AT&T Florida's obligations and CA would then need to invoke the dispute resolution process if it was still not satisfied. (EXH 31, Bates No. 229) CA also noted however that the dispute resolution system is inadequate because by the time the process would be completed, CA would likely lose the customer. (EXH 28, Bates No. 93) CA states this language is necessary to prevent AT&T Florida from arbitrarily and incorrectly denying UNE orders placed by CA. (TR 64)

AT&T Florida

CA has access to the same tools to determine the availability of facilities that AT&T Florida uses to make a determination. (TR 579) CA may perform a mechanized Loop Make Up by using either an existing telephone number or end user address. This process utilizes the same records AT&T Florida relies upon to determine availability, and would enable CA to conduct its own research if it is not satisfied with AT&T Florida's response. (TR 579) In addition, CA may request AT&T Florida to perform a manual Loop Make Up at the charge found in the Pricing Schedule. (TR 579)

CA's proposed language would require AT&T Florida to prove unavailability of facilities to CA's satisfaction, with CA having sole discretion to determine if/when it is satisfied. (TR 579) If CA believes that AT&T Florida's determination regarding a lack of facilities is incorrect, CA is free to invoke its right to dispute resolution under the ICA and further could submit the issue to the Commission for resolution. (TR 580)

Even if it were appropriate to require AT&T Florida to meet some undefined standard to satisfy CA that requested facilities do not exist, CA proposes that AT&T Florida perform this task at no charge to CA. AT&T Florida asserts that this is inconsistent with federal law which permits AT&T Florida to recover the costs it incurs to provision services to a CLEC. (AT&T Florida BR 161)

Analysis

At issue is the accuracy of the Loop Make Up systems offered by AT&T Florida. AT&T Florida asserts that its employees will use the same tools to verify the availability of UNEs as CA would have access to. (TR 759) AT&T Florida also claims that CA's language allows CA to determine when it is satisfied with an explanation and requires AT&T Florida to expend its resources without condition or recourse until CA is satisfied. (TR 579)

By comparison, AT&T Florida's process requires CA to pay for a manual Loop Make Up when the automated system indicates that UNEs are unavailable and wants more information review. (TR 579) As a result, in the instances where there is an error and AT&T Florida's automated Loop Make Up reports that a UNE is unavailable and is discovered to be available through a manual Loop Make Up report, CA would still be required to pay the associated fee for the manual process.

During depositions, staff asked the parties if they objected to the fee associated for the manual Loop Make Up being refunded in such instances. (EXH 46, Bates No. 1615, EXH 50, Bates Nos. 1944-1945) While AT&T Florida's witness Kemp indicates she would not object, she also states she does not have the authority to approve such a change. (EXH 50, Bates Nos. 1944-1945) CA witness Ray indicates that while it does not squarely address its issue, "it might be close enough." (EXH 46, Bates No. 1615)

CA's proposed language is too broad and allows it to determine when it is satisfied with an explanation while requiring AT&T Florida to expend its resources without condition or recourse. Staff believes that AT&T Florida's proposed ICA language is appropriate for this issue, however, that language should specify that CA should be reimbursed for manual Loop Make Up reports that show that UNE orders that were rejected through AT&T Florida's mechanized system were in error. Staff proposes to amend AT&T Florida's language to include the following language: In instances when AT&T-21STATE's automated Loop Make Up reports the availability of a UNE after AT&T-21STATE's automated Loop Make Up reports the unavailability of the same UNE, CA will be credited for the fee associated for the manual Loop Make Up report.

Conclusion

Staff recommends that AT&T Florida should not be required to prove to CA's satisfaction and without charge that a requested UNE is not available; however, AT&T Florida's proposed language should be amended to refund the manual Loop Make Up report fee when it is inconsistent with the automated system.

Issue 53: Should CA be allowed to commingle any UNE element with any non-UNE element it chooses? (UNE § 2.3)

Recommendation: No. Staff recommends that CA should only be allowed to commingle "wholesale" services to any UNE element with any non-UNE element and recommends CA's proposed language as modified by staff. (Fogleman)

Position of the Parties

CA: Yes. CA believes that it is entitled to commingle facilities as specified in its language, and that AT&T's language restricts CA's ability to commingle in a manner inconsistent with FCC rules and orders.

AT&T Florida: No. The agreed language for UNE § 2.3 is consistent with controlling federal law, which limits commingling to linking a UNE with facilities or services obtained from AT&T at wholesale. CA's proposed additional language unlawfully fails to limit commingling to wholesale services or facilities.

Staff Analysis: At issue is the appropriate language relating to the commingling of facilities and the applicability of FCC rules. CA proposes additional language that would entitle it to commingle any UNE with any other service element so long as the combination is technically feasible. AT&T Florida objects to CA's proposed language and contends that the FCC's rules limit commingling to "wholesale" services or facilities. The FCC defines commingling in 47 C.F.R. § 51.5 as:

> Commingling means the connecting, attaching, or otherwise linking of an unbundled network element, or a combination of unbundled network elements, to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC, or the combining of an unbundled network element, or a combination of unbundled network elements, with one or more such facilities or services. Commingle means the act of commingling.

Parties' Arguments

CA

CA believes that it is entitled to commingle facilities so long as the combination is technically feasible. By comparison, CA asserts that AT&T Florida's language restricts CA's ability to commingle in a manner inconsistent with FCC rules and orders. (TR 65) CA notes that it would be open to adding language to clarify that any non-UNE "service element" must be purchased from an AT&T Florida agreement, tariff or price list. (TR 124)

AT&T Florida

AT&T Florida asserts that CA's proposed language is not consistent with the FCC's definition of commingling. (TR 580) The FCC's definition limits commingling to linking a UNE with facilities or services obtained from AT&T Florida at wholesale. (TR 581) CA, however, seeks to undo that limitation by adding language that would allow it to commingle a UNE with "any other service element purchased from" AT&T Florida. (TR 581) CA's added language does not limit commingling to "wholesale" services or facilities as the FCC's definition requires. (TR 582)

Analysis

AT&T Florida is correct that 47 C.F.R. 51.1 limits commingling to "wholesale" services. CA concedes this point. (EXH 28, Bates No. 97) Staff had proposed a modification to CA's language to add "at wholesale." CA and AT&T Florida agree that this would be acceptable and would address AT&T Florida's objection to CA's language. (EXH 50, Bates Nos. 1955-1957, EXH 28, Bates No. 98) Staff's proposed addition to CA's language is in bold below.

> CLEC shall be entitled to commingle any UNE with any other service element purchased **at wholesale** from AT&T21STATE either form this agreement of from any AT&T21STATE tariff, so long as the combination is technically feasible. Such commingling shall be required even if the specific arrangement sought by CLEC is not commonly commingled by AT&T21STATE.

Staff believes that CA's proposed language as modified to include staff's proposed language that limits commingling to "wholesale" services or facilities as the FCC's definition requires is appropriate for this issue.

Conclusion

Staff recommends CA should only be allowed to commingle "wholesale" services to any UNE element with any non-UNE element and recommends CA's proposed language as modified by staff.

Issue 54A: Is thirty (30) days written notice sufficient notice prior to converting a UNE to the equivalent wholesale service when such conversion is appropriate? (UNE § 6.2.6)

Recommendation: Yes. Staff recommends thirty (30) days written notice is sufficient; however, AT&T Florida's proposed language should be amended to explicitly exclude instances of a wire center reclassification, which is addressed in Issue 54B. (Fogleman)

Position of the Parties

CA: Yes, but not with AT&T's language as proposed. There are only two events that could trigger this provision: wire center reclassification or CA having improperly obtained too many UNE circuits on a specific route. In cases of wire center reclassification, CA cannot possibly transition its entire customer base to new service arrangements in 30 days.

AT&T Florida: Yes. CA should know before receiving notice that a UNE no longer meets eligibility criteria. Furthermore, conversion of UNEs to equivalent wholesale services does not require facilities changes, just a rate change. Requiring 180 days' notice would prolong CA's enjoyment of reduced rates to which it is not entitled.

Staff Analysis: Issue 54A addresses instances in which CA would no longer meet the eligibility criteria applicable to order a UNE or UNE combination. For example, 47 C.F.R. 51.319(a)(4)(ii) limits a requesting telecommunications carrier to a maximum of ten unbundled DS1 loops to any single building in which DS1 loops are available as unbundled loops. Similarly, 47 C.F.R. 519(a)(5)(ii) limits a requesting telecommunications carrier to a maximum of a single unbundled DS3 loop to any single building in which DS3 loops are available as unbundled loops. This issue is not related to conversions as a result of reclassification of a wire center which is addressed in Issue 54B.

Parties' Arguments

CA

CA states that it cannot transition its customer base to new services arrangements in the 30 days proposed by AT&T Florida. (TR 65) CA asserts that it must re-design and re-engineer the affected service(s) before placing orders for new service with AT&T Florida or other carriers to replace the sunset elements. CA points to three other interconnection agreements with 180 day transition periods. (EXH 31, Bates Nos. 230-231) In further discussions regarding the applicability of this transition period, CA states that it "is unaware of any event that would cause a CLEC to no longer meet the eligibility criteria for UNEs other than a wire center reclassification." (EXH 28, Bates No. 102)

CA does not believe that such a conversion would be as simple as a change in billing rate. If an element were suddenly unavailable, the CLEC would be forced to undertake a major network change to compensate because the rate difference between UNE rates and special access rates is significant. (EXH 26, Bates No. 25)

CA clarifies that its specific concern regarding this issue relates to AT&T Florida's proposed language, asserting that it is too broad. It believes that AT&T Florida's language could be read to apply in cases where a wire center reclassification is taking place. CA agrees that 30 days is adequate time in instances where CA has improperly obtained a UNE. (EXH 46, Bates No. 1618) CA proposes that AT&T Florida's language (30 days) should be approved for UNE 6.2.6 to resolve this issue, but that the first sentence should read "**Except in the case of a wire center reclassification,** if CLEC does not meet…" to make this language distinct from the language in Issue 54B which addresses wire center reclassifications. (Additional language in bold) (CA BR 164-165)

AT&T Florida

AT&T Florida has proposed 30 days' notice when CA's UNEs or UNE combinations no longer meet the eligibility criteria. (TR 583) CA should know how many loops it has to every building it serves. (TR 583) CA can avoid the requirement for this notice, however, by effectively monitoring it activities and maintaining its UNE and UNE combination loop inventory. This would enable CA to proactively convert services on its own, rather than waiting until AT&T Florida manages the conversion for CA. (TR 622)

By delaying the conversion from UNE to wholesale service, CA benefits from lower UNE rates for that length of time at AT&T Florida's expense. (TR 584) CA's request of 180 days is simply an attempt to keep UNE rates as long as possible. (TR 584) AT&T Florida believes that the 180-day transition period cited to by CA has nothing to do with Issue 54A, but relates to when a wire center that was not included on the initial list of unimpaired wire centers is added to the list (Issue 54B). (EXH 36, Bates No. 609).

Analysis

The eligibility of a carrier to meet the criteria applicable to order UNE or UNE combination is broader than wire center reclassification. 47 C.F.R. 51.319(a)(4)(ii) and 47 C.F.R. 519(a)(5)(ii) are two such examples. While CA initially states that it "is unaware of any event that would cause a CLEC to no longer meet the eligibility criteria for UNEs other than a wire center reclassification" (EXH 28, Bates No. 102), the deposition of CA witness Ray suggests otherwise. In instances where you have a new circuit that you are entitled to get, witness Ray states that he did not propose a 180-day timeframe, but instead proposed a 30-day timeframe. (EXH 46, Bates No. 1618)

In the examples discussed by AT&T Florida, the issue only affects the incremental customer being added within the building. (TR 583) Thus, it does not appear that all of the services within the building need to be "redesigned." For this reason, CA's proposed language appears to be unreasonable. Within CA's brief, however, it appears to change its position to agree to a 30-day timeframe, expressing concern that AT&T Florida's language could be taken out of context and applied to wire center reclassification. (CA BR 164-165) Staff believes the resulting proposed language, "Except in the case of a wire center reclassification," is consistent with the nature AT&T Florida has presented this issue. (TR 583, EXH 36, Bates No. 609)

Conclusion

Staff recommends thirty (30) days written notice is sufficient; however, AT&T Florida's proposed language should be as amended to explicitly exclude instances of a wire center reclassification, which is addressed in Issue 54B.

Issue 54B: Is thirty (30) calendar days subsequent to wire center Notice of Non-impairment sufficient notice prior to billing the provisioned element at the equivalent special access rate/Transitional Rate? (UNE § 14.10.2.2, § 14.10.2.3.1.1 and § 14.10.2.3.1.2)

Recommendation: No. Staff recommends one hundred twenty (120) calendar days subsequent to wire center non-impairment notice is sufficient. (Fogleman)

Position of the Parties

CA: No. The actual effect of AT&T's language, if approved, would be to prevent CA from using the most valuable UNEs it is entitled to such as dark fiber, because without adequate transition time it would likely be immediately bankrupt if AT&T ever invoked this sunset provision as proposed.

AT&T Florida: Yes. Thirty days following notice of non-impairment is the appropriate timeframe to begin billing special access rates. Requiring notice of 180 days would prolong CA's enjoyment of reduced rates to which it is not entitled. Moreover, CA may self-certify, which provides a timeline different from the 30-day special access billing.

Staff Analysis: Issue 54B addresses the appropriate length of time following a notice of non-impairment to bill an element at a special access rate. While similar to Issue 54A which addresses the length of time following a written notice within a building, Issue 54B addresses the time frame for an entire wire center.

Parties' Arguments

CA

CA believes that the FCC intends that when a wire center becomes non-impaired, CLECs should transition services from UNEs to alternative commercial arrangements rather than being forced out of the marketplace and into bankruptcy, leaving subscribers without service. AT&T Florida's proposed language makes a transition impossible and harms consumers who would lose service as a direct result. (TR 66)

CA argues that this is not only about true-ups and billing. Facilities changes may be necessary if there is no special access equivalent. CA suggests that once a wire center is designated as non-impaired, AT&T Florida has a number of different non-UNE service options that CA can choose from. To do this, CA would need to submit a Local Service Request to AT&T Florida to convert the UNE(s) to the new arrangement. CA believes this is not a simple question, as it will take time for CA to determine, for each UNE being converted, what its best option will be. CA may also need to consider other options, such as using a third-party provider for the service or disconnecting the customer's service because it is no longer financially feasible to provide without the UNE. (TR 126)

According to CA, AT&T Florida does not get to automatically convert a UNE to another type of service. CA believes it is highly unlikely that CA would choose to convert the UNE to AT&T Florida's highest-price special access service, which is what AT&T Florida would most likely try to convert the UNE to. Since it is CA's decision which service to transition to, from whom to obtain that service, and how to design that replacement service, CA expects the process will take time. (EXH 33, Bates Nos. 468-469)

CA has cited three currently in-force ICAs with other CLECs where the 180 day transition period is used. CA asserts that the last six years of boilerplate AT&T Florida ICAs, none of which were arbitrations, should have no bearing on what is reasonable here. (TR 126)

Even assuming that this is just about true-up, CA believes the real issue is that under AT&T Florida's language, it would be entitled to convert CA's UNE service to its most-expensive special access service, even if lower cost options were available. CA states that in order for it to manage such a transition effectively, it must have enough time to assess the impact of the re-designation, determine what customer circuits are affected, and identify which conversion options are available. Only then can CA place an order with AT&T Florida to convert the service to the new arrangement or disconnect the service entirely if there are no feasible conversion options. (TR 127)

AT&T Florida

AT&T Florida says such a conversion as addressed in Issue 54B occurs when AT&T Florida reclassifies a wire center and provides written notification to CLECs that specific wire center meets one or more of the FCC's impairment thresholds. (TR 584) AT&T Florida continues stating, if CA disputes the AT&T Florida wire center non-impairment designation, it may provide a self-certification to AT&T Florida. Subsequently, AT&T Florida states it may choose to file for dispute resolution at the Commission set to a different timeline, during which AT&T Florida will continue to provide the high-capacity UNE loop or transport facility in question to CA at the rates in the pricing schedule. (TR 585) Thus, AT&T Florida must provision the UNE and subsequently bring any dispute regarding access to that UNE before the Commission. AT&T Florida contends that there is no conversion of facilities involved, only a true up of rates. (TR 585)

AT&T Florida claims that CA's reliance on the 180-day transition period in the TRRO is unavailing, noting that those transaction periods were specifically ordered for the initial transition from UNE rates to special access rates. Years later, there is nothing groundbreaking or novel about the FCC's impairment criteria and eligibility standard, and the factors that led the FCC to declare a 180-day transition period simply are not present, according to AT&T Florida. (AT&T Florida BR 167)

AT&T Florida contends that thirty days is sufficient notice subsequent to wire center non-impairment for CA to pay special access rates because at such time the wire center meets the criteria set out by the FCC. In this situation, the wire center is non-impaired, and AT&T Florida is no longer obligated to offer UNE loop/transport elements at UNE rates to CA or other CLECs in that wire center. (TR 586) Delaying the true up for more than 30 days after notice, CA would enjoy the lower UNE rates for that length of time at AT&T Florida's expense. (TR 586) AT&T Florida notes that its proposed 30-day period actually starts after 60-day notice on non-impairment, thus CA would in effect have 90-day notice. AT&T Florida witness Kemp indicated that she believes that the additional 60 days is set out by the FCC on reclassification of wire centers. (EXH 50, Bates Nos. 1946-1947)

Analysis

Staff is not compelled by AT&T Florida's assertion that thirty days' notice is sufficient time for CA to transition services from UNEs to alternative commercial arrangements for an entire wire center. CA should have a reasonable amount of time to evaluate its options for provisioning service to its customers, including the use of networks from third-party carriers. While CA proposes 180 days, it is not clear if it included the 60-day notice requirement. AT&T Florida noted that the three examples provided by CA of 180 day transition periods were related to the wire center non-impairment findings (i.e. Issue 54B). (EXH 36, Bates No. 609) AT&T Florida also acknowledges that the ICA timelines in Florida range from 30 days to 180 days. (EXH 38, Bates No. 747)

Staff believes one hundred twenty (120) calendar days is sufficient prior to billing the provisioned element at the equivalent special access rate/Transitional Rate and would still provide a total of 180 days' notice including 60 days after the notice of non-impairment.

Conclusion

Staff recommends one hundred twenty (120) calendar days subsequent to wire center non-impairment notice is sufficient.

Issue 55: To designate a wire center as unimpaired, should AT&T Florida be required to provide written notice to CA? (UNE § 15.1)

Recommendation: No. Staff recommends AT&T Florida should not be required to provide written notice to CA to designate a wire center as unimpaired. However, AT&T Florida should be directed to provide CA with any email address(es) it intends to use to distribute impairment notifications so CA can mitigate concerns regarding spam filters. (Fogleman)

Position of the Parties

CA: Yes. AT&T should provide actual written notice to CA for such major changes affecting CA. Simply posting a notice to a website or sending an email without sending notice under the ICA's notices provision is unlawful, unreasonable and could harm CA's customers without adequate warning to prevent disruption of services.

AT&T Florida: No. AT&T provides notice of network changes via an Accessible Letter that is posted to CLEC Online, a website accessible to all CLECs. In addition, any CLEC that wants to receive individual notices may subscribe to direct notices of Accessible Letters and email notices of wire center nonimpairment designations.

Staff Analysis: This issue deals with the means by which AT&T Florida should notify CA of a wire center non-impairment finding. CA proposes it should receive a certified letter from AT&T Florida. AT&T Florida proposes to use its current system of posting impairment letters online and sending email notifications to those carriers that want them.

Parties' Arguments

CA

CA argues that posting a notice to the web to designate a wire center as unimpaired with no further notice is unreasonable and could harm CA and CA's customers without adequate warning for CA to prevent any disruption of services. (TR 67) CA notes that all other ILECs in Florida send non-impairment notices via certified mail, which is what CA is requesting AT&T Florida to do. (TR 67)

Regarding the email notice, CA expressed skepticism that such a notice would be sufficient because once AT&T Florida sends the email it can deflect responsibility regarding its receipt by CA. (TR 128) CA contends that emailed notices are often lost for various reasons, including getting caught in spam filters, typographical errors in the address, and notices sent as an email attachment with an unknown password. (EXH 26, Bates No. 26) A written notice delivered via certified mail is reasonable according to CA because a wire center nonimpairment notice is often a potential extinction event for a CLEC. (EXH 26, Bates No. 26) CA also notes that this agreement requires CA to provide written notices to AT&T Florida via US Mail and argues that there is no reason why AT&T Florida should be excused from providing the same notice to CA. (EXH 26, Bates No. 26)

AT&T Florida

According to AT&T Florida, there are two ways that AT&T Florida notifies CLECs of network related changes. First, network information is posted on CLEC Online in the form of an

Accessible Letter. As defined in the General Terms and Conditions section of the ICA, Accessible Letter(s) means "the correspondence used to communicate pertinent information regarding AT&T Florida to the CLEC community and is (are) provided via posting to the AT&T Florida CLEC Online website." (TR 586-587)

Second, AT&T Florida argues that the Accessible Letters are sent via email to CLECs that subscribe to the process. The Accessible Letter process, with the option of direct notice, is used by all AT&T ILECs and is accepted by the CLEC community according to AT&T Florida. (TR 587) A CLEC that elects this option specifies the recipient to whom AT&T Florida is to send the Accessible Letters. CLECs can designate multiple recipients. (TR 623)

AT&T Florida further argues that CA's proposal to provide individualized notices for CA would be costly, inefficient, unreasonable, and discriminatory to other CLECs. (TR 587) AT&T Florida does not require CA or other CLECs to provide correspondence via certified mail. (EXH 38, Bates No. 750)

Analysis

AT&T Florida estimates that the cost to send a single notice is about $12.00 based on approximately $5 for labor and $7.17 for US Postal Service (certified mail, return receipt requested). Within the last 12 months, there were no wire centers in Florida that were moved from impaired to non-impaired. (EXH 38, Bates No. 751)

CA asserts that AT&T Florida requires CA to provide written notices to AT&T Florida via US Mail but does not provide any support for its assertion. (EXH 26, Bates No. 26) AT&T Florida states that it does not have such a requirement. (EXH 38, Bates No. 750p.54) Section 21.0 of the ICA addresses notice given by one party to the other party, unless specifically provided otherwise within the ICA. It provides for three general methods of communication: 1) by physical document, 2) by fax, or 3) by email. Physical documents can be delivered either personally, express delivery service, certified mail, or first class U.S. Postal Service. (EXH 2, p.39)

CA provides for a number of reasons why email notices are unreliable. Regarding CA's concern about typographical errors in the address, AT&T Florida notes that it is CA that enters the address. (EXH 50, Bates No. 1948) Thus, any typographical error would be a result of CA mistyping an email address. Regarding attachments with unknown passwords, AT&T Florida maintains that it does not password protect such notifications. (EXH 50, Bates No. 1948) Regarding CA's spam filter, staff believes CA should be responsible for setting up its spam filter to accept AT&T Florida's email. For these reasons, staff believes that AT&T Florida's proposed contract language is appropriate.

Conclusion

Staff recommends AT&T Florida should not be required to provide written notice to CA to designate a wire center as unimpaired. However, AT&T Florida should be directed to provide CA with any email address(es) it intends to use to distribute impairment notifications so CA can mitigate concerns regarding spam filters.

Issue 56: Should the ICA include CA's proposed language broadly prohibiting AT&T Florida from taking certain measures with respect to elements of AT&T Florida's network? (UNE § 4.6.4)

Recommendation: Yes. Staff recommends that the ICA should include CA's proposed language prohibiting AT&T Florida from taking in use circuits for its own benefit or business purposes or for its own customers; however, staff believes that the ~~inclusion of the~~ phrase "and/or substitute another UNE in its place," should not be included. (Fogleman)

Position of the Parties

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

AT&T Florida: No. CA's proposed language is overly broad and could inhibit AT&T from maintaining its network in an efficient fashion.

Staff Analysis: This issue addresses a dispute regarding contract language that would limit AT&T Florida's ability to take CA's in-service circuits. CA proposes the following language that it contends places reasonable limits on AT&T Florida:

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

AT&T Florida contends that CA's language is overly broad and could affect maintenance and repair of AT&T Florida's network. As an alternative, AT&T Florida has proposed the following language:

> If AT&T Florida converts an in-service UNE provided to CA, it will replace the UNE with a UNE with the ability to provide the level of service ordered by CA.

Parties' Arguments

CA

CA contends that AT&T Florida has taken in-service loops from CLECs for its own customers and leaves CLECs with inferior loops. (EXH 31, Bates Nos. 231-232) AT&T Florida's position is that it would never take in-service loops for its own customers, so CA does not understand AT&T Florida's reluctance to commit not to take in-service loops for AT&T Florida's own customers. (TR 67) If AT&T Florida takes a CLEC's working, conditioned, tested loop for its own customers and substitutes an inferior unconditioned, untested one, the CLEC's customers suffer for the benefit of AT&T Florida and its customer. CA believes this would be unfair and does not represent parity. (CA BR 172)

CA disagrees with AT&T Florida's characterization that its proposed language is overly broad and would interfere with the course of maintaining and repairing its network. CA's proposed language clearly states that AT&T Florida shall not tamper with or convert an in-service UNE **for its own benefit or business purposes or for its own customers.** This situation is easily distinct from a repair issue, where the repair would not be for AT&T Florida's benefit or for AT&T Florida's customer's benefit. (EXH 28, Bates No. 104)

AT&T Florida

AT&T Florida denies that it "tampers" with any CLEC's UNEs or services. The language proposed by CA, according to AT&T Florida, is overly broad and could inhibit AT&T Florida from maintaining its network in an efficient fashion. AT&T Florida states in the course of maintaining and repairing its network, that it may be necessary for it to switch CA's UNE from one facility to another to ensure the integrity of the UNE being provided to CA or to another CLEC. For example, if a cable serving CA is cut, it could be necessary for AT&T Florida to transfer CA's UNE circuit to a different cable to place it back in service. This would not be tampering, but AT&T Florida believes the vague unqualified language proposed by CA opens AT&T Florida to such a claim. (TR 588)

AT&T Florida would condition a new loop, if a spare is available, rather than swap a loop with one serving CA's customer. If AT&T Florida were to change a condition loop to an unconditioned one, it would not be providing the product or service that had been requested and CA would have remedies. (TR 624) As an alternative to CA's proposed language, AT&T Florida indicated that it would agree to the following language: "If AT&T Florida converts an in-service UNE provided to CA, it will replace the UNE with a UNE with the ability to provide the level of service ordered by CA." (EXH 38, Bates No. 752)

Analysis

AT&T Florida objects to CA's proposed ICA language in this issue asserting that it is too broad and could interfere with network maintenance and repairs. However, AT&T Florida only provides one example, a cable cut affecting a CA customer, where AT&T Florida may have to transfer CA's UNE circuit to a different cable to place it back in service. AT&T Florida contends that CA's "vague unqualified language" could open AT&T Florida to claim that it had violated the terms of the ICA if this language is approved. (TR 588)

Yet the language proposed by CA is qualified. Specially, the prohibition included in CA's proposed language would not allow AT&T Florida to make such network modifications to CA's in-service UNEs for AT&T Florida's "own benefit or business purposes or for its own customers." The example proposed by AT&T Florida would not be affected because it is the result of necessary network maintenance as a result of a loop being cut, not a deliberate action intended to benefit AT&T Florida's business purposes or customer(s). (EXH 28, Bates No. 104) CA's proposed language however, concludes by broadening these conditions to include "and/or substitute another UNE in its place."

AT&T Florida had proposed alternative language that would have the effect of requiring AT&T Florida to replace a disconnected UNE with a UNE that can provide the level of service ordered by CA. (EXH 38, Bates No. 752) However, AT&T Florida witness Kemp noted that there may be technical characteristics that are different. Specifically, if a loop was replaced with another loop, the replacement loop could operate differently than the loop CA had originally received from AT&T Florida. (TR 677) CA's language would only prohibit such a change if it were for AT&T Florida's benefit, whereas AT&T Florida language would have no similar prohibition.

Staff believes that CA's proposed language, after removing the phrase "and/or substitute another UNE in its place," is not overly broad as contended by AT&T Florida, but is a condition to prohibit AT&T Florida from making such network modifications to CA's in-service UNEs for AT&T Florida's "own benefit or business purposes or for its own customers."

Conclusion

Staff recommends that the ICA should include CA's proposed language prohibiting AT&T Florida from taking in use circuits for its own benefit or business purposes or for its own customers; however, staff believes that ~~the inclusion of~~ the phrase "and/or substitute another UNE in its place."

Should not be included

Issue 57: May CA use a UNE to provide service to itself or for other administrative purposes? (UNE § 4.7.1)

Recommendation: No. Staff recommends that CA may not use a UNE to provide service to itself or for other administrative purposes. (Fogleman)

Position of the Parties

CA: Yes. It is well settled that CLECs are permitted to order and use UNEs as a part of a CLEC's network for any lawful purpose, subject to certifications and impairment restrictions contained elsewhere in this Agreement. AT&T may not specify the manner in which CA may use UNEs to which it is entitled.

AT&T Florida: No. FCC rules require AT&T to provide UNEs to CLECs only for the provision of telecommunications services to the CLEC's end-user customers. AT&T's language appropriately prohibits CA from using UNEs to provide service solely to itself or for administrative purposes.

Staff Analysis: At issue is whether federal rules allow, prohibit or are silent regarding the ability of CA to use UNEs to provide service to itself or for administrative purposes. AT&T Florida points to the Act's definition of a telecommunications service, while CA addresses the issue in terms of how a network is constructed.

Parties' Arguments

CA

Unlike resale service, UNEs often do not serve a specific end user subscriber but instead are part of a CLEC's overall network infrastructure which is used to serve its subscribers according to CA. CA believes that as a practical matter, such non-customer-specific UNEs could be interpreted to be used to provide service to CA itself. CA does not believe that AT&T Florida is entitled to specify exactly what CA may do or not do with UNEs to which CA is entitled. (TR 68, EXH 41, Bates No. 262) CA cites 47 C.F.R. § 51.309(a) which states:

> Except as provided in 51.318, an incumbent LEC shall not impose limitations, restrictions or requirements on requests for, or the use of, unbundled network elements for the service a requesting telecommunications carrier seeks to offer.

CA is concerned that AT&T Florida's language would unlawfully restrict CA's ability to purchase UNEs to only those which serve specific subscribers, which would be a severe limitation upon CA. This limitation would prevent the ordering or use of UNEs such as dark fiber transport, DS3 transport, Synchronized Timing, CLEC-to-CLEC cross-connects and more, according to CA. (CA BR 175) CA opposes AT&T Florida's language, and suggests that no language is necessary.

AT&T Florida

AT&T Florida argues that the Act and the FCC's rules define a "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."[76] (TR 589, TR 625-626) AT&T Florida also notes the duty of an incumbent carrier to provide UNEs is found in 47 C.F.R. § 51.307(a):

> An incumbent LEC shall provide, to a requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of Sections 251 and 252 of the Act, and the Commission's rules.

AT&T Florida states that a CLEC that uses a UNE to provide service to itself for its own administrative purposes would not be using that UNE to provide service "to the public" or "for a fee," and therefore would not be using the UNE to provide a telecommunications service. (TR 589) To that end, AT&T Florida has proposed the following ICA language:

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

AT&T Florida acknowledges that there are some UNEs, such as dedicated interoffice transport, that would not be used by CA to serve a specific customer, but rather would be part of its overall network. CA can still obtain available UNEs, provided they are used to provide telecommunications service and to provide service to CA's customers in general (e.g., by connecting to the local loops that serve CA's customers). The only effect of AT&T Florida's proposed language is to make clear that CA cannot obtain a UNE and then use that UNE solely to provide service to itself or for administrative purposes rather than using it as part of its overall network to service end-user customers. (TR 625-626)

Analysis

The requirement to provide UNEs is limited to the provision of telecommunications services pursuant to 47 C.F.R. § 51.307(a). The Act defined a telecommunications service as "the offering of telecommunications for a fee directly to the public, or to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used" pursuant to 47 C.F.R. § 51.5.

CA attempts to apply 47 C.F.R. § 51.309 regarding how UNEs are used, yet this presupposes that the UNEs are provisioned pursuant to the requirement of 47 C.F.R. § 51.307. The limitations within 47 C.F.R. § 51.307 precede the protection offered within 47 C.F.R. § 51.309. As a result, staff believes CA may not use a UNE to provide service to itself or for other administrative purposes because it would not be to the public or for a fee.

Furthermore, the rule that CA relies on (47 C.F.R. § 51.309) addresses the use of UNEs ". . . for the service a requesting telecommunications carrier seeks to offer." Staff believes the provision of a service to itself is inconsistent with offering a service.

[76] 47 U.S.C. § 153(46); 47 C.F.R. § 15.5.

Finally, if CA believes AT&T Florida is not applying its unbundling obligations correctly for a non-customer-specific UNE for the provision of a telecommunications service and that such action is an anticompetitive act, CA may file a complaint with this Commission pursuant to Section 364.16(2), F.S.

AT&T Florida has clarified that there are some UNEs, such as dedicated interoffice transport, that would not be used by CA to serve a specific customer, but rather would be part of its overall network. CA can still obtain available UNEs, provided they are used to provide telecommunications service and to provide service to CA’s customers in general. For these reasons, staff believes that AT&T Florida’s proposed contract language is appropriate.

Conclusion

Staff recommends that CA may not use a UNE to provide service to itself or for other administrative purposes.

Issue 58: Is multiplexing available as a stand-alone UNE independent of loops and transport? (UNE § 6.4.2 and § 9.6.1)

Recommendation: No. Staff recommends that multiplexing should not be available as a stand-alone UNE independent of loops and transport; however, AT&T Florida's language in Section 6.4.2 of the ICA should be modified to more closely mirror the FCC's rule language by removing the phrase "or higher." While multiplexing is not a stand-alone UNE, staff believes that multiplexing is a routine network modification and recommends that Section 9.6.1 of the ICA be blank. (Fogleman)

Position of the Parties

CA: Yes. CA believes that multiplexing is a Routine Network Modification and as such it should be available in any technically feasible combination to a CLEC, even if not ordered as part of an EEL which includes transport service. An example of a non-EEL multiplexing arrangement would be a loop+multiplexing combination.

AT&T Florida: Affected contract language: UNE 6.4.2: No. 47 C.F.R. § 51.319 is the exclusive list of UNEs, and multiplexing is not on the list. Consequently, multiplexing is not available as a stand-alone UNE. Multiplexing is available when ordered in conjunction with unbundled dedicated transport to provide an enhanced extended loop.

Affected contract language: UNE 9.6.1: No. Multiplexing is available under the ICA only as part of an enhanced extended loop. AT&T Florida's proposed language in UNE § 9.6.1 makes clear that when CA orders DS1 or DS3 unbundled dedicated transport, this service will include multiplexing.

Staff Analysis: While the issue was framed to address the availability of multiplexing as a stand-alone UNE independent of loops and transport, the parties also address the availability of multiplexing as a requirement related to routine network modifications that are addressed in the FCC's rules. AT&T Florida defines multiplexing as a conversion of a circuit from either a higher bandwidth to lower bandwidth or from digital to voice grade. (TR 591)

Parties' Arguments

CA

CA is not arguing that multiplexing must be offered as a standalone UNE. Multiplexing is a routine network modification which is used to further divide a circuit such as a DS3 into what CA calls tails. Thus, you could take a circuit and divide it into smaller subdivided circuits which are used for various purposes. (TR 155)

CA is arguing that multiplexing should be offered/combined with: 1) UNE loops, 2) UNE transport, and 3) UNE loops that are combined with UNE transport (i.e., multiplexed enhanced extended loops or EELs). CA defines an EEL as a type of circuit that a CLEC can order when it needs to serve a customer that is served from a CO where the CLEC does not have a collocation. (TR 154-155) CA further states that an EEL contains two components: loop and transport. The loop serves the customer premise, and the transport component is connected to that loop. The loop carries their circuit back to the collocation that the CLEC has in a different CO. (TR 155)

CA contends that AT&T Florida does all of the above for itself and should be required to do this for CLECs as well at cost-based rates. (TR 68)

CA's specific objection is that UNE multiplexing should not automatically be considered an EEL, and subject to the restrictions and additional cost imposed upon EELs. (TR 68) CA argues multiplexing/loop combinations should be permitted. However, it would not be an EEL if the multiplexer is fed from a CLEC collocation and no UNE transport is part of the arrangement. (TR 68-69) CA believes multiplexing should be considered a routine network modification as noted in 47 C.F.R. § 51.319(d)(4). (TR 155-156)

AT&T Florida

AT&T Florida contends that multiplexing is not available as a standalone UNE because it is not listed in 47 C.F.R. § 51.139. AT&T Florida states FCC Rule 51.319 is the sole and exclusive list of UNEs. AT&T Florida believes states cannot expand the list to include additional UNEs. Multiplexing is not on the list and, therefore, does not have to be provided on a stand-alone basis. (TR 590)

A CLEC may order stand-alone multiplexing from AT&T Florida's special access tariff. Additionally, multiplexing may be ordered in conjunction with Unbundled Dedicated Transport (UDT) at the time UDT is ordered; in this instance it will be provided at the rates contained in the pricing schedule. (TR 590) AT&T Florida is proposing language in Section 6.4.2 of the ICA that essentially mirrors the language used in 47 C.F.R. 51.318(b) and argues that there is no reasonable basis for CA to oppose that language. (TR 590-591)

AT&T Florida also proposes a definition of multiplexing that is used in Section 9.6.1 of the ICA that is objected to by CA. AT&T Florida defines multiplexing as an item ordered in conjunction with DS1 or DS3 UDT that converts a circuit from higher to lower bandwidth or from digital to voice grade. AT&T Florida argues multiplexing is only available when ordered at the same time as DS1 or DS3 UDT at the rates set forth in the Pricing Schedule. (TR 591) Because the definition conflicts with CA's desire to order standalone multiplexing, it has omitted the definition from the ICA. Because it does not appear elsewhere in the ICA, AT&T Florida states that Section 9.6.1 is the appropriate location for the definition of multiplexing. (TR 592)

Regarding the assertion that multiplexing is a routine network modification, AT&T Florida concedes that the FCC rules address network modifications and multiplexing, but it is only in the context of deploying a new multiplexer or reconfiguring an existing multiplexer for an active circuit that has already been constructed. (TR 698-699) AT&T Florida further states that in the case where a circuit that was already multiplexed had an issue that required AT&T Florida to install a new multiplexer or reconfigure one that is already there to make sure the circuit is good, that would be a routine network modification. (TR 699) By comparison, multiplexing, which changes the bandwidth of a circuit, is not a routine network modification according to AT&T Florida. (TR 698)

Analysis

First, AT&T Florida is proposing the following language (bold) in Section 6.4.2. CA's proposed language would exclude this text:

> 6.4.2 AT&T-21STATE is not obligated, and shall not, provide access to (1) an unbundled DS1 UNE Loop in combination, or Commingled, with a DS1 UDT facility or service or a DS3 or higher UDT facility or service, or an unbundled DS3 UNE Loop in combination, or Commingled, with a DS3 or higher UDT facility or service, or (2) an unbundled DS1 UDT facility in combination, or Commingled, with an unbundled DS1 UNE Loop **or a DS1 channel termination service, or to an unbundled DS3 UDT facility in combination, or Commingled, with an unbundled DS1 UNE Loop or a DS1 channel termination service,** or to an unbundled DS3 UNE Loop **or a DS3 or higher channel termination service** (collectively, the "Included Arrangements"), unless CLEC certifies that all of the following conditions are met with respect to the arrangement being sought. . . .

AT&T Florida's witness Kemp states that the contract language should mirror the FCC's rule. (TR 591) While AT&T Florida's language closely tracks that of the 47 C.F.R. 51.318(b) listed below, it is not an exact match. AT&T Florida's proposed language includes the phrase "or higher" in two places in its proposed language. The "or higher" phrase does not appear in the FCC's rule. Staff has emphasized the corresponding text below to highlight the differences between the rule and AT&T Florida's proposed contract language.

> 47 C.F.R. §51.318(b) An incumbent LEC need not provide access to an unbundled DS1 loop in combination, or commingled, with a dedicated DS1 transport or dedicated DS3 transport facility or service, or to an unbundled DS3 loop in combination, or commingled, with a dedicated DS3 transport facility or service, or an unbundled dedicated DS1 transport facility in combination, or commingled, with an unbundled DS1 loop **or a DS1 channel termination service, or to an unbundled dedicated DS3 transport facility in combination, or commingled, with an unbundled DS1 loop or a DS1 channel termination service,** or to an unbundled DS3 loop **or a DS3 channel termination service**, unless the requesting telecommunications carrier certifies that all of the following conditions are met. . . .

CA provides no compelling reason why the language in the ICA should not reflect that of the FCC rule. Furthermore, CA does not argue that multiplexing is an UNE, but argues that it is a routine network modification. (TR 155-156)

Second, AT&T Florida seeks to include a definition of multiplexing in the UNE DS1 and DS3 Dedicated Transport section of the ICA. AT&T Florida's proposed language below would have the effect of limiting the availability of multiplexing to only when it is ordered at the same time as DS1 or DS3 unbundled dedicated transport:

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

CA asserts that 47 C.F.R. § 51.319(d)(4) requires AT&T Florida provide multiplexing as a routine network modification. CA objects to AT&T Florida's definition and proposes that it be left blank. CA seeks to avail itself to multiplexing in a multiplexing/loop combination where CA supplies its own transport. However, 47 C.F.R. § 51.319(d)(4) is a subsection addressing routine network modifications in instances where the ILEC provides the dedicated transport. Yet there is a corresponding rule regarding routine network modification for unbundled loop facilities (47 C.F.R. § 51.319(a)(7)). Thus, the FCC rules appear to address the requirements regarding routine network modifications that are necessary for transport loop facilities ordered independently from other UNEs. Both rules are listed below:

> 47 C.F.R. § 51.319 Specific unbundling requirements
> (a) Local loops
>
> . . .
>
> (7) Routine network modifications.
>
> (i) An incumbent LEC shall make all routine network modifications to unbundled loop facilities used by requesting telecommunications carriers where the requested loop facility has already been constructed. An incumbent LEC shall perform these routine network modifications to unbundled loop facilities in a nondiscriminatory fashion, without regard to whether the loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.
>
> (ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; **deploying a new multiplexer or reconfiguring an existing multiplexer**; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier.
>
> (emphasis added)

. . .

(d) Dedicated transport

. . .

(4) Routine network modifications.

(i) An incumbent LEC shall make all routine network modifications to unbundled dedicated transport facilities used by requesting telecommunications carriers where the requested dedicated transport facilities have already been constructed. An incumbent LEC shall perform all routine network modifications to unbundled dedicated transport facilities in a nondiscriminatory fashion, without regard to whether the facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

(ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; installing a repeater shelf; and **deploying a new multiplexer or reconfiguring an existing multiplexer**. They also include activities needed to enable a requesting telecommunications carrier to light a dark fiber transport facility. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for a requesting telecommunications carrier. (emphasis added)

AT&T Florida witness Kemp argues that routine network modifications relate only to a circuit that is already constructed. For example, in the case where a circuit was already multiplexed and something happened, AT&T Florida would either install a new multiplexer or reconfigure the one that is already there. (TR 699)

While the FCC's TRO order did limit the ILEC's requirement to perform network modification on existing facilities, its limitation was on existing wires and does not appear to be related to multiplexer equipment. The FCC noted that "These routine modifications include deploying multiplexers to existing loop facilities and undertaking the other activities that incumbent LECs make for their own retail customers."[77] The TRO order also noted that "attaching routine electronics, such as multiplexers . . . is already standard practice . . . " and ". . . performing such functions is easily accomplished."[78]

[77] FCC 03-36, CC Docket No. 01-338, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, released August 21, 2003, p. 7.
[78] Ibid., p. 396.

This issue addresses contract language in two Sections of the ICA: 6.4.2 and 9.6.1. AT&T Florida's contract language in Section 6.4.2 is similar to the FCC's rule language. Despite testimony by AT&T Florida's witness Kemp that the language should mirror the rule, some language (i.e. "or higher") is not in the FCC's rule. While CA states it does not argue that multiplexing must be offered as a standalone UNE, it did contest language found in AT&T's proposed contract language that, for the most part, is parallel to the FCC's rules. CA's argument is focused on the availability of multiplexing as a routine network modification. Staff believes that AT&T Florida's language in Section 6.4.2 is reasonable within the context of the FCC's rule; however, the phrase "or higher" should be removed to correspond to the language found in the FCC's rule.

In Section of the ICA 9.6.1, AT&T Florida has proposed language that would restrict multiplexing to when it is ordered at the same time as DS1 or DS3 unbundled dedicated transport. By comparison, CA proposes to leave this section blank, arguing that such a restriction is inconsistent with the FCC rules regarding routine network modification. After reviewing the FCC's rules and the TRO, staff believes multiplexing is a routine network modification that is found within the requirements of unbundled loop facilities[79] and unbundled dedicated transport.[80]

Conclusion

Staff recommends that multiplexing should not be available as a stand-alone UNE independent of loops and transport; however, AT&T Florida's language in Section 6.4.2 of the ICA should be modified to more closely mirror the FCC's rule language by removing the phrase "or higher." While multiplexing is not a stand-alone UNE, staff believes that multiplexing is a routine network modification and recommends that Section 9.6.1 of the ICA be blank.

[79] 47 C.F.R. § 51.319(a)(7)
[80] 47 C.F.R. § 51.319(d)(4)

Issue 59A: If AT&T Florida accepts and installs an order for a DS1 after CA has already obtained ten DS1s in the same building, must AT&T Florida provide written notice and allow 30 days before converting to and charging for Special Access Service? (UNE § 8.1.3.4.4)

Recommendation: Yes. If a DS1 loop is installed and later CA is determined to be over the FCC's building cap, staff recommends that AT&T Florida must provide written notice and allow 30 days before converting to and charging for Special Access service. (Fogleman)

Position of the Parties

CA: Yes. CA has no way to know what AT&T considers to be a single building. Some buildings have multiple addresses, others have multiple structures which share a common street address. This fact is likely to give rise to disagreements about when CA has reached the 10 DS1 cap per-building.

AT&T Florida: No. CA must manage and track its inventory of DS1 loops. If CA has ten DS1 loops to a building, it should be aware that if it orders another DS1 loop to that building, it must pay special access rates. It is not AT&T's responsibility to manage CA's network.

Staff Analysis: At issue is which company runs the risk of an error in ordering over the cap or accepting an order over a cap for a DS1 loop (Issue 59A),[81] a DS3 loop (Issue 59B),[82] or a DS1 or DS3 unbundled dedicated transport circuit (Issue 59C).[83] To the extent there is an error, AT&T Florida argues that it should have the unilateral right to charge special access rates upon discovery of what it believes is an order or existing circuit over the FCC's cap. By comparison, CA argues that AT&T Florida should be required to notice CA to allow both parties 30 days to attempt to resolve the dispute, and if necessary, allow CA to re-engineer the circuit.

In the FCC's TRRO order, the FCC evaluated a requesting carrier's ability to utilize third-party alternatives to high-capacity loops, or to self-deploy such loops, to serve particular locations in an economic manner. For DS1 loops, the FCC found that requesting carriers are impaired without access to DS1-capacity loops at any location within the service area of an ILEC wire center containing fewer than 60,000 business lines or fewer than four fiber-based collocators.[84]

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[81] The abbreviation, DS1, stands for Digital Signal, Level 1, and represents a digital local loop having a total digital signal speed of 1.544 megabytes per second. 47 C.F.R. § 51.319(a)(4)(i) A DS1 is the equivalent of 24 DS0 or 24 voice grade channels. A loop is the transmission facilities between a central office and the customer's premises, i.e., "the last mile" of a carrier's network that enables the end-user to originate and receive communications.

[82] The abbreviation, DS3, stands for Digital Signal, Level 3 and represents a digital local loop having a total digital signal speed of 44.736 megabytes per second. 47 C.F.R. § 51.319(a)(5)(i) A DS3 is the equivalent of 28 DS1s.

[83] Dedicated interoffice transmission facilities (dedicated transport circuit) are facilities dedicated to a particular customer or CLEC that it uses for transmission among ILEC central offices and tandem offices. CLECs generally use interoffice transport as a means to aggregate end-user traffic to achieve economies of scale. They do so by using dedicated transport to carry traffic from their end users' loops, often terminating at ILEC central offices, through other central offices to a point of aggregation. Ultimately, the traffic is carried to the competitor's switch or other equipment, often from an ILEC central office along a circuit generally known as an entrance facility. FCC 03-36, CC Docket No. 01-338, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, released August 21, 2003, p. 224.

[84] Ibid., p. 100.

In those wire centers where a CLEC is impaired, the FCC established a cap of ten DS1 loops that each carrier may obtain in a building.[85]

For DS3 loops, the FCC found that CLECs are impaired without access to DS3-capacity loops at any location within the service area of an ILEC wire center containing fewer than 38,000 business lines or fewer than four fiber-based collocators. In those wire centers where a CLEC is impaired, the FCC established a cap of one DS3 a CLEC can obtain at each building.[86]

Parties' Arguments

CA

CA believes that it is reasonable that AT&T Florida must actually notify CA of its intention prior to converting an in-service circuit from the service it ordered, an unbundled DS1 loop, to a special access service. CA argues that it needs time to make its own decision and service change before AT&T Florida's action occurs. For new orders, CA does not believe that AT&T Florida should automatically install a circuit other than what was ordered if what was ordered is unavailable. CA states that AT&T Florida should reject the UNE order back to CA stating that the ordered service is not available, instead of installing special access when UNE was ordered. According to CA, if AT&T Florida installs the circuit, then it should be installed as a UNE as ordered by CA, and then AT&T Florida may begin the conversion process by sending the required notice if desired. (TR 69)

CA believes AT&T Florida should either install what was ordered, or refuse to install the order. CA has only asked for 30 days after AT&T Florida's notice to decide what changes it may need to make. CA asserts that if it has ordered a UNE service when it was not entitled to it, CA would bear two sets of ordering costs and the likely cost of re-designing the service; thus there is a financial disincentive for CA to order UNEs which it is not entitled to in these cases. (TR 129)

CA states that it will track the number of DS1 and DS3 UNE loops it has in a building, but that its issue primarily relates to the differences in addresses. For example, you may have a building that has two or more different street addresses. CA argues AT&T Florida's records may consider it to be one building and that could cause confusion. CA believes it does have a duty to not knowingly order more loops than it is entitled to. (EXH 46, Bates Nos. 1623-1624)

AT&T Florida

AT&T Florida cites the FCC's rule that limits a CLEC to obtaining "a maximum of ten unbundled DS1 loops to any single building . . . ." 47 C.F.R. § 51.319(a)(4)(ii). Thus, if a carrier orders more than ten DS1 UNE loops to a single building, it is not entitled to pay DS1 UNE loop rates on loops 11 and above. Rather, it must switch to a DS3 unbundled loop, or build its own loops, or pay tariffed special access rates to AT&T Florida. *See Triennial Review Remand Order*, p. 181. (TR 592)

AT&T Florida's proposed contract language provides that if CA orders more DS1s than the FCC's rules permit, AT&T Florida can accept the order but convert the DS1 that exceeds the cap from UNE rates to special access rates. By comparison, AT&T Florida argues that CA's

[85] Ibid., p. 101.
[86] Ibid., p. 100.

language does not accurately reflect the law. AT&T Florida believes CA's language provides that if AT&T Florida accepts an order for a DS1 unbundled loop to a building where CA has already met the cap, AT&T Florida must provide 30 days' prior written notice before converting that facility to special access and charging the tariffed special access rate. According to AT&T Florida, CA proposes to put the burden on AT&T Florida to track the number of CA's DS1 unbundled loops to make sure they do not exceed the cap, and to keep charging UNE rates for at least a month after it discovers that CA has improperly obtained a DS1 facility that exceeds the cap. (TR 593)

AT&T Florida states the FCC does not require ILECs to track CLEC loop totals and delay enforcing the ten DS1 cap. A CLEC has no legal right to obtain more than 10 DS1 UNE loops to a building. AT&T Florida argues if CA exceeds that limit, AT&T Florida is entitled to charge special access rates for the extra circuits from the day they are provisioned, regardless of whether AT&T Florida notified CA it exceeded the cap or for when AT&T Florida discovers the error. (TR 593) AT&T Florida states nothing in the FCC rules requires AT&T Florida to only recover UNE rates for facilities that exceed the UNE cap. (TR 627)

AT&T Florida states that it would reject the UNE order back to CA if it catches CA's error at the time of the order and knows CA is going to exceed the cap. The ICA language in dispute is necessary to protect AT&T Florida in situations where it does not catch CA's error and proceeds to provision CA's order. At issue is where the risk of error should lie. AT&T Florida should be allowed to recover special access prices from the date of provisioning. Any other result would give CA a windfall discount just because AT&T Florida did not immediately catch CA's error. (TR 628)

Analysis

Staff believes AT&T Florida is correct that this issue is about where the risk of error should lie. Neither party could identify FCC rules that indicate who is responsible if a CLEC requests, and an ILEC provides a loop or dedicated transport circuits over the cap. (EXH 46, Bates No. 1623; EXH 50, Bates No. 1952) Both parties agree that if caught when ordering, the order over the cap should be denied. (TR 628, TR 69) Both parties agree that they cannot go over the 10 DS1 cap. (TR 592, EXH 46, Bates Nos. 1623-1624) The issue is what rate should be charged for one month if the cap is exceeded.

AT&T Florida states that it has the ability to track the number of DS1s or DS3 UNE loops ordered, but that it is not done on a monthly or regular basis. (EXH 50, Bates No. 1952) It does not compare these numbers to the cap in advance of accepting an order with CA in every case. (EXH 50, Bates Nos. 1952-1953) AT&T Florida was not able to report how many times it has caught such errors in the last 12 months. (EXH 38, Bates No. 754) By comparison, CA states that it will track the number of DS1 or DS3 UNE loops ordered to the extent that it can. Its issue primarily relates to the difference in the addresses CA has on record relative to what AT&T Florida has for a particular building. (EXH 46, Bates No. 1623)

While AT&T Florida argues that allowing CA 30 days to decide how to respond would result in giving CA a windfall discount (TR 628), CA counters this argument noting that it would bear two sets of ordering costs and the likely cost of re-designing the service. (TR 129) Neither party provided data regarding how much such discounts might be for a month, or an estimated cost of re-designing a service. As a result, it is not possible to say definitively whether the potential revenue generated from an extra 30 days exceeds the expense of re-designing a service.

Staff believes that a 30 day period is reasonable time for the parties to resolve issues relating to the address of a customer/building and the number of existing loops over the FCC's cap. When AT&T Florida accepts an order from CA, it should either install the circuit that was ordered or indicate that it is not available due to the cap limitation being reached. AT&T Florida should not install a special access service when a UNE was ordered. Staff believes that CA's proposed contract language is appropriate.

Conclusion

If a DS1 loop is installed and later CA is determined to be over the FCC's building cap, staff recommends that AT&T Florida must provide written notice and allow 30 days before converting to and charging for Special Access service.

Issue 59B: Must AT&T Florida provide notice to CA before converting DS3 Digital UNE loops to special access for DS3 Digital UNE loops that exceed the limit of one unbundled DS3 loop to any single building? (UNE § 8.1.3.5.4)

Recommendation: Yes. If a DS3 loop is installed and later CA is determined to be over the FCC's building cap, staff recommends that AT&T Florida must provide written notice and allow 30 days before converting to and charging for Special Access service. (Fogleman)

Position of the Parties

CA: Yes. CA has no way to know what AT&T considers to be a single building. Some buildings have multiple addresses, others have multiple structures which share a common street address. This fact is likely to give rise to disagreements about when CA has reached the 10 DS1 cap per-building.

AT&T Florida: No. CA must manage and track its inventory of DS3 loops. If CA already has a DS3 loop in a building, it should be aware that if it orders another DS3 loop in the building, it must pay special access rates. It is not AT&T's responsibility to manage CA's network.

Staff Analysis: See Issue 59A.

Parties' Arguments

CA

See Issue 59A arguments above

AT&T Florida

This issue is identical to Issue 59A except that that this issue concerns DS3 loops instead of DS1s. FCC Rule 47 C.F.R. § 51.319(a)(5)(ii) limits a CLEC to a "maximum of a single unbundled DS3 loop to any single building…." When a CLEC needs two or more DS3's to a single building, the CLEC must either self-deploy DS3 beyond the first one or find some other way to carry its traffic. (TR 594) As with Issue 59A, AT&T Florida contents that CA seeks to avoid these requirements and shift the burden to AT&T Florida to act as CA's record keeper and allow CA to keep paying UNE rates for some period when it has no right to do so. Thus, the Commission should adopt AT&T Florida's language and reject CA's proposed language for Issue 53B for the same reason as on Issue 59A. (TR 595)

Analysis

See analysis of Issue 59A. While the type of loops (DS3s vs DS1s) and the FCC's cap (one DS3 vs ten DS1s) changes from Issue 59A to 59B, the testimony and analysis are the same. Staff believes that a 30 day period is reasonable time for the parties to resolve issues relating to the address of a customer/building and the number of existing loops over the FCC's cap. If AT&T Florida accepts an Order from CA, it should either install the circuit that was ordered or indicate that it is not available due to the cap limitation being reached. AT&T Florida should not install a special access service when a UNE was ordered. Staff believes that CA's proposed contract language is appropriate.

Conclusion

If a DS3 loop is installed and later CA is determined to be over the FCC's building cap, staff recommends that AT&T Florida must provide written notice and allow 30 days before converting to and charging for Special Access service.

Issue 59C: For unbundled DS1 or DS3 dedicated transport circuits that AT&T Florida installs that exceed the applicable cap on a specific route, must AT&T Florida provide written notice and allow 30 days prior to conversion to Special Access? (UNE § 9.6.2 and § 9.6.3)

Recommendation: No. Staff recommends that AT&T Florida should not be required to provide written notice and allow 30 days before converting to and charging for Special Access service. (Fogleman)

Position of the Parties

CA: Yes. CA has no way to know what AT&T considers to be a single building. Some buildings have multiple addresses, others have multiple structures which share a common street address. This fact is likely to give rise to disagreements about when CA has reached the 10 DS1 cap per-building.

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

Staff Analysis: While similar to Issues 59A and 59B, this issue addresses the cap relating to Unbundled Dedicated Transport (UDT). Dedicated transport facilities are lines dedicated to a particular customer or competitive carrier that it uses for transmission among incumbent LEC COs and tandem offices.[87] Competing carriers generally use UDT as a means to aggregate end-user traffic to achieve economies of scale.[88] The cap relating to UDT is not based on buildings, but rather unique routes between wire centers or switches.

Parties' Arguments

CA

CA believes that it is reasonable that AT&T Florida must actually notify CA of its intention prior to converting an in-service circuit, so that CA has time to make its own decision and service change before AT&T Florida's action occurs. For new orders, CA does not believe that AT&T Florida should automatically install a circuit other than what was ordered if what was ordered is unavailable. AT&T Florida should reject the UNE order back to CA stating that the ordered service is not available, instead of installing special access when UNE was ordered. If AT&T Florida installs the circuit, then it should be installed as a UNE as ordered by CA, and then AT&T Florida may begin the conversion process by sending the required notice if desired. (TR 69)

AT&T Florida should either install what was ordered, or refuse to install that. CA has only asked for 30 days after AT&T Florida's notice to decide what changes it may need to make. CA asserts that if it has ordered a UNE service when it was not entitled to it, CA would bear two sets of

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[87] FCC 03-36, CC Docket No. 01-338, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order on Remand, and Further Notice of Proposed Rulemaking, released August 21, 2003, ¶ 361.
[88] Ibid.

ordering costs and the likely cost of re-designing the service. Thus, there is a financial disincentive for CA to order UNEs which it is not entitled to in these cases. (TR 129)

AT&T Florida

AT&T Florida believes it is not obligated to provide more than twelve DS3 Unbundled Dedicated Transport (UDT) circuits and ten DS1 UDT circuits on any route. (TR 595) If CA does not want to pay special access rates, CA should cease ordering when the cap has been met. (TR 596) If CA has already obtained the limit of DS1 UDT or DS3 UDT circuits on a single route, and orders additional UDT circuits, AT&T Florida may choose to reject the order or to install the service. (TR 596) AT&T Florida states that it would reject the order back to CA if it catches CA's error at the time of the order and knows CA is going to exceed the cap. (TR 628) Once installed, AT&T Florida argues that it should be able to convert any UDT circuit in excess of the cap to special access with no notice. (TR 596)

Analysis

This issue is similar to Issues 59A and 59B, but in this instance it pertains not to loops, but to DS1 and DS3 dedicated transport. Another key difference is that as opposed to a cap related to a building, the cap for UDT circuits is based on routes. The FCC's rules define a route in 47 C.F.R. 51.319(d) as:

> a transmission path between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches. A route between two points (e.g., wire center or switch ''A'' and wire center or switch ''Z'') may pass through one or more intermediate wire centers or switches (e.g., wire center or switch ''X''). Transmission paths between identical end points (e.g., wire center or switch ''A'' and wire center or switch ''Z'') are the same ''route,'' irrespective of whether they pass through the same intermediate wire centers or switches, if any.

Unlike in Issues 59A and 59B where CA argues that there may be discrepancies regarding what CA considers a building and what AT&T Florida considers a building when counting DS1 or DS3 loops, CA makes no corresponding arguments relating to routes. According to the FCC's rules, a route is very specific and CA has provided no explanation regarding why it should not be responsible to track its orders or why its tracking might be different than that of AT&T Florida. Instead, CA argues that AT&T Florida should not be able to install a different service than what was ordered. Staff is not compelled by this argument given how the FCC defines a route. Staff believes that AT&T Florida's proposed contract language is appropriate.

Conclusion

Staff recommends that AT&T Florida should not be required to provide written notice and allow 30 days before converting to and charging for Special Access service.

Issue 60: Should CA be prohibited from obtaining resale services for its own use or selling them to affiliates? (Resale § 3.2)

Recommendation: Yes. Staff recommends that CA be prohibited from obtaining resale services for its use or selling them to affiliates. (Williams)

Position of the Parties

CA: No. CA would agree with AT&T's language here except for AT&T's reference to affiliates. CA does not dispute that it may not order resale service for its own use. However, other entities which may have some affiliation with CA should be entitled to purchase resale services from CA.

AT&T Florida: Yes. FCC and state commission precedents strongly support AT&T's language prohibiting CA from obtaining telecommunications services from AT&T at wholesale rates for resale to itself or its affiliates. The prohibition is a reasonable limitation on resale and is consistent with the purpose of the resale requirement.

Staff Analysis: The core issue is whether CA should be prohibited from obtaining resale services at the wholesale discount for its own use or selling the services to an affiliate who is also a CLEC as part of a larger service package. (CA BR 181, AT&T Florida BR 179) Section 251(c)(4) of the Act addresses obligations associated with offering services for resale at a wholesale discount to subscribers who are not telecommunications carriers. The applicable Contract Provision is Resale 3.2.

Section 251(c)(4) of the Act specifically states that the ILEC has the duty:

> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
>
> (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

Parties Arguments

CA

CA does not dispute that it may not order resale service for its own use. However, CA argues that it should be entitled to order and use resale service for a burglar/fire alarm line or for a fax line at an affiliate's office building or at the home of one of its officers. (TR 70)

CA further argues that other entities which may have some affiliation with CA should be entitled to purchase resale services from CA. CA states that its main issue relates to AT&T Florida's prohibition of resale at the wholesale rate to affiliates. (CA BR 180)

CA acknowledges that it is not authorized under federal law to purchase services at wholesale rates for its own use. In support of its position, CA cites 47 C.F.R. §51.605(e) which states:

> Except as provided in 51.613 an incumbent LEC shall not impose restrictions on resale by a requesting carrier of telecommunications services offered by the incumbent LEC.

CA argues that the dispute revolves around the ability of CA to purchase resale services at wholesale rates, then sell the services to an affiliate who is also a CLEC which would then sell the service to an end user. CA contends that AT&T Florida's language would prohibit this, which CA believes is an unreasonable restriction upon its use of resale services. (CA BR 181)

CA also argues that "in response to staff's interrogatory 70, witness Pellerin states 'There are two AT&T Florida affiliates that have ICAs that include resale services: AT&T Corp and TCG South Florida. AT&T Florida provides services to these affiliates at the wholesale discount only for the purpose of resale to end users.'" Thus, CA argues that AT&T Florida witness Pellerin has confirmed that AT&T Florida does provide services to its affiliates for resale to others at a wholesale discount, just as CA seeks to do with its affiliates. CA contends that AT&T Florida's proposed language in this dispute is discriminatory since it has provided its affiliates with resale terms superior to those it seeks to impose upon CA. (CA BR 180)

CA further argues that AT&T Florida witness Pellerin confirmed that AT&T Florida's only basis for its position is that the FCC's rule permits AT&T Florida to impose "reasonable restrictions on resale." CA believes this is an unreasonable restriction upon its use of resale services and should not be supported by the Commission. (TR 372)

AT&T Florida

AT&T Florida argues that Section 251(c)(4) of the Act plainly states that AT&T Florida is only obligated to offer its retail services for resale at a wholesale discount to subscribers who are not telecommunications carriers. (AT&T Florida BR 179) Therefore, CA is not entitled to the wholesale discount on lines obtained for its own use. Further, AT&T Florida argues that CA's affiliates should also not be given the opportunity to avoid legitimate restrictions on resale by using lines CA obtains for resale from AT&T Florida. (AT&T Florida BR 180)

AT&T Florida agrees with CA that Section 251(c)(4)(B) of the Act prohibits it from imposing unreasonable or discriminatory limitations on resale. In contrast to CA, however, AT&T Florida points out that the Act also allows AT&T Florida to impose reasonable, nondiscriminatory limitations on resale. (TR 260, TR 261, AT&T Florida BR 180)

AT&T Florida explains that because the purpose of the resale requirement is to allow CA to compete with AT&T Florida by reselling to end users the services that CA buys from AT&T Florida at wholesale rates, AT&T Florida proposes language for Resale §3.2 that states that AT&T Florida has no obligation to make services available at the wholesale discount to CA for its own use or for the use of an affiliate.

AT&T Florida further contends that while Section 251(c)(4)(B) of the Act prohibits AT&T Florida from imposing "unreasonable or discriminatory . . . limitations on, the resale of . . . telecommunications service," it allows AT&T Florida to impose reasonable, nondiscriminatory limitations on resale. The prohibition on a CLEC reselling AT&T Florida's services to itself or its affiliate is a reasonable and non-discriminatory limitation on resale, and has been approved by state commissions. (TR 260, TR 261).

Directly counter to CA's position that it should be allowed to resell AT&T Florida's services to itself or its affiliate, AT&T Florida stresses that this is at odds with FCC rulings. AT&T Florida notes that in its 1996 *Local Competition Order*, the FCC states (at ¶ 875), "Section 251(c)(4) does not require the incumbent LECs to make services available for resale at wholesale rates to parties who are not 'telecommunications carriers' *or who are purchasing service for their own use*." (Emphasis added). Similarly, paragraph 874 states, "Section 251(c)(4) does not entitle subscribers to obtain services at wholesale rates for their own use."

AT&T Florida further argues that the FCC is clear: AT&T Florida must offer its services for resale to CA, but it is not required to provide services to CA *as an end user* at a wholesale rate. This principle comports with the purpose of Section 251(c)(4), which is to enable CLECs to compete with the ILEC by purchasing the ILEC's services at wholesale rates and reselling the services to end users at a profit. AT&T Florida believes that purpose would not be served by allowing CA to buy services from AT&T Florida at a wholesale discount for its own or its affiliates' use. (TR 261)

Citing additional support beyond Section 251(c)(4), AT&T Florida also points to actions taken by other state Commissions in Wisconsin,[89] Indiana,[90] and Michigan[91] to support its position. (AT&T Florida BR 180-181)

AT&T Florida's argument concludes by emphasizing that when CA elects to provision its customers by reselling AT&T Florida's service, CA is bound by the reasonable limits that are part and parcel of Section 251(c)(4) and the FCC's implementing rules. Therefore, AT&T Florida contends that per Section 251(c)(4) and the FCC's implanting rules, CA is not entitled to resell AT&T Florida's services to itself or its affiliates. (AT&T Florida BR 181)

AT&T Florida's position is that prohibiting a CLEC from reselling AT&T Florida services to itself or its affiliates is reasonable and nondiscriminatory and the Commission should adopt AT&T Florida's language for Resale §3.2. (AT&T Florida BR 181)

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

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

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

Analysis

The purpose of resale is to facilitate competition for providing local exchange services to end users. This is primarily accomplished by requiring the ILECs to offer discounted services at wholesale rates to CLECs for resale to non-telecommunications customers. That is, to allow CLECs to effectively compete with ILECs in offering telecommunications services to end users. Allowing CLECs to purchase telecommunications services at wholesale discounts for its own use or the use of its affiliates would violate the spirit of Section 251(c)(4) of the Act. (AT&T Florida BR 179-181)

Staff agrees with CA that AT&T Florida should have no input into how CA designs its network or provisions its customers as presented in witness Ray's testimony. (TR 70) Staff also agrees with CA that CA is entitled to sell resale service to any party it chooses, as long as it does not violate the terms of the agreement. (CA BR 180)

However, staff disagrees with CA's argument that it should be entitled to order and use resale service for a burglar/fire alarm line or for a fax line at an affiliate's office building or at the home of one of CA's officers. (TR 70) Staff believes such action would be a violation of Section 251(c)(4) of the Act. Again, the Act is clear that CA cannot purchase wholesale services through the ICA for its own use. Providing a burglar/fire alarm or fax line to an affiliate would constitute internal use. Further and clearly, providing an access line to the home of one of CA's officers would fall under the category of personal use.

In addition, staff takes issue with CA's argument as it relates to CA selling services to its telecommunications affiliates. In another contradiction, CA acknowledges that its intent is to sell wholesale services to its telecommunications affiliates. CA states that it primarily disputes the ICA's prohibition of CA's ability to purchase resale services at wholesale rates, then sell the services to an affiliate who is also a CLEC which would then sell the service to an end user. CA contends that AT&T Florida's language would prohibit this, which CA believes is an unreasonable restriction upon its use of resale services. (CA BR 181) Obviously, such an action would be in conflict with the Act. Section 251(c)(4) of the Act specifically states that the ILEC has the duty:

> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers;

Staff is of the opinion that CA's acknowledgement of purchasing telecommunications services at the wholesale rate, then re-packaging those services and selling them to an affiliate for sale to end users, would be in violation of federal law. In addition, such arrangements may present regulatory obstacles and challenges in terms of identifying and monitoring certificated service providers.

Staff finds no support for CA's argument regarding two AT&T Florida affiliates (AT&T Corp and TCG South Florida) that have ICAs that include resale services. Granted, AT&T Florida does provide services to these affiliates at the wholesale discount for the purpose of resale to end users. However, the services are provided through ICAs consistent with non-affiliate agreements. CA's telecommunications affiliates would be able to establish similar agreements at wholesale rates directly from AT&T Florida consistent with AT&T Florida affiliates and other CLEC service providers. Staff disputes CA's allegation that "AT&T's proposed language in this dispute is discriminatory since it has provided its affiliates with resale terms superior to those it seeks to impose upon CA." (CA BR 180-181)

Staff is persuaded by AT&T Florida's argument that Section 251(c)(4) of the Act states that AT&T Florida is only obligated to offer its retail services for resale at a wholesale discount to subscribers who are not telecommunications carriers. (AT&T Florida BR 180, TR 70, 259-262) It is staff's position that CA is not entitled to the wholesale discount rate from AT&T Florida for resale services for its own use or selling them to its telecommunications affiliates.

Staff also references AT&T Florida citing additional support beyond Section 251(c)(4). AT&T Florida points to actions taken by other state Commissions in Wisconsin,[92] Indiana,[93] and Michigan[94] in support of its position. Each state decision is consistent that Section 251(c)(4) prohibits CLECs from using resale services obtained through wholesale agreements with ILECs for its own use or use by its affiliates. (AT&T Florida BR 179-181)

As stated earlier, the purpose of resale is to facilitate competition in the local exchange market. This is primarily accomplished by requiring the ILECs to offer discounted services at wholesale rates to CLECs for resale to non-telecommunications customers. That is, to foster a level playing field to allow CLECs to effectively compete with ILECs in offering telecommunications services to end users. Allowing CLECs to purchase telecommunications services at wholesale discounts for its own use or the use of its affiliates would violate the spirit of Section 251(c)(4) of the Act. Based on staff's analysis, AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that CA be prohibited from obtaining resale services for its use or selling them to affiliates.

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

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

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

Issue 61: Which party's language regarding detailed billing should be included in the ICA? (Resale § 5.2.1)

Recommendation: Staff recommends that AT&T Florida's language regarding detailed billing be included in the ICA. (Williams)

Position of the Parties

CA: CA believes its position is directly supported by FCC regulations which it has cited. AT&T has cited nothing in support of its position. CA would be unable to file billing disputes under the agreed billing disputes language without detailed billing from AT&T as required by CA's proposed language.

AT&T Florida: AT&T's language should be adopted because it provides CA with the ability to obtain, without charge, all the detailed billing information it needs. CA's language inappropriately relies on an FCC Order that concerns retail billing, not billing for resale services.

Staff Analysis: The parties disagree as to how the ICA should describe the detailed billing AT&T Florida will make available to CA for resale services at no charge. The key issue is whether CA has to proactively request detailed billing and the level of detail it desires through AT&T Florida's CLEC Billing Guide on AT&T Florida's CLEC Online website. CA believes that detailed billing is required under FCC 99-72 and 47 C.F.R. §64.2400-2401. AT&T Florida contends that its language is precisely the language CA proposed during the parties' negotiations, except that CA's language states that detailed monthly billing is an option. (TR 263) The applicable contract language is Resale 5.2.1.

Parties Arguments

CA

CA argues that although AT&T Florida has vaguely asserted that those rules apply only to retail consumer bills, it has not shown any evidence that this is the case and the plain reading of the rules do not so indicate. (CA BR 182)

CA contends that without the detail, it would be unable to dispute incorrect charges on AT&T Florida's bills under the agreed billing disputes language and it would be unfair to CA if AT&T Florida were permitted to bill incorrect amounts which could not be disputed by CA because of a lack of detail. CA further argues that the rules it has cited specifically state that their purpose is to provide the necessary detail for a purchaser of telecommunications service to be able to audit and dispute charges on a bill. CA contends that AT&T Florida has shown no basis for why CA should not be entitled to bill detail to audit and dispute charges, just as consumers can. (TR 70, CA BR 182)

CA argues that it objects to AT&T Florida's language because it places the burden upon CA to request something to which CA is already entitled. CA argues that it is entitled to billing detail for every bill, every month unless it opts out. (CA BR 183)

AT&T Florida

AT&T Florida points out that if its language is included in the ICA, CA will be able to request detailed billing for its resale customers via CA's CLEC Online Profile. (AT&T Florida BR 182) AT&T Florida explains that it does not charge for detailed billing as described in Section 5.2.1. AT&T Florida further explains that CA also has the option of obtaining a daily usage file (DUF) for its resale customers, for which AT&T Florida charges the rates set forth in the Pricing Schedule. AT&T Florida makes note that CA has not contested these rates. (TR 263) AT&T Florida further asserts that if CA had to pay to exercise the option, the objection would be understandable–but it does not have to pay.

AT&T Florida notes that CA states that it needs billing detail in order to bill its resale customers or dispute AT&T Florida's bills. (TR 70) But that does not explain CA's objection to AT&T Florida's language, because CA can have the detail under AT&T Florida's language; all it has to do is ask for it.

The reason for requiring the request for detail is that AT&T Florida gives all CLECs, including CA, the ability to select the level of billing detail they deem appropriate for their business needs. AT&T Florida provides a comprehensive CLEC Billing Guide on its CLEC Online website from which CA can select the detail to appear on its bills.[95] When it completes its CLEC Profile, CA will select the specific billing detail it wants; AT&T Florida does not make those decisions on the CLEC's behalf. (TR 307)

AT&T Florida also argues that whatever CA's objection to this approach may be, it cannot be taken seriously because CA has not reviewed the CLEC Billing Guide to understand the levels of billing detail AT&T Florida offers. (TR 307, AT&T Florida BR 183)

AT&T Florida further argues that CA's language for Resale § 5.2.1 must be rejected, because it would require AT&T Florida's detailed billing to "meet all regulatory requirements of FCC Order 99-72 for detailed billing." The billing rules established in that order (47 C.F.R. §§ 64.2400 and 2401) relate to retail bills to consumers, not resale bills to other carriers. (TR 264)[96]

In conclusion, AT&T Florida argues that the Commission should adopt its language for Resale § 5.2.1, because it will provide CA with the detailed billing information on resale lines it needs to bill its end users and to dispute bills. (AT&T Florida BR 183)

Analysis

Staff believes it is relevant that the process used and presented by AT&T Florida in the agreement is consistent with the other AT&T Florida ICAs. (AT&T Florida BR 183) Staff agrees with the rationale that requiring the request for detail gives CLECs the ability to select the level of billing they deem appropriate. (TR 307)

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[95] http://wholesale.att.com/reference_library/guides/html/understanding_bill.html.

[96] The first sentence of FCC Order 99-72 states, "In this Order, we undertake common-sense steps to ensure that consumers are provided with basic information they need to make informed choices in a competitive telecommunications marketplace . . . ."

Staff also agrees with AT&T Florida's argument that its language should be adopted because it provides CA with the ability to obtain detailed billing information, at no charge, on resale lines that would enable CA to bill its end users. In addition, CA would have the ability to select the level of detail it desires via its CLEC Online profile. (AT&T Florida BR 183)

AT&T Florida does not charge for detailed billing as described in Section 5.2.1. However, CA also has the option of obtaining a daily usage file ("DUF") for its resale customers, for which AT&T Florida charges the rates set forth in the Pricing Schedule. CA has not contested these rates. (TR 263)

CA believes that its position is directly supported by FCC regulations. CA argues that it would be unable to file billing disputes under the agreed billing disputes language if it did not receive detailed billing from AT&T Florida as required by CA's proposed language. CA states that it needs billing detail to bill its resale customers or to dispute AT&T Florida's bills. (TR 70) Staff believes that CA's position does not have merit because CA has the ability to obtain detailed bills at no cost upon request.

AT&T Florida believes that CA's language requiring full compliance with FCC Order 99-72 is inappropriate for an ICA. AT&T Florida argues that the FCC's billing rules in 47 C.F.R. §§ 64.2400 and 2401, upon which CA relies, relate to retail bills to consumers, not resale bills to other carriers.

AT&T Florida points out that the procedures for ordering detailed bills are consistently applied to all its ICAs. Hence, the process required under the terms of the AT&T Florida/CA agreement would be consistent with the other AT&T Florida CLEC agreements. (AT&T Florida BR 182)

Staff is persuaded by AT&T Florida's argument that it is CA's option whether to request detailed billing. In addition, staff has taken into consideration that AT&T Florida does not charge for detailed billing as presented in Section 5.2.1 of the contract. (TR 262-263) Staff supports AT&T Florida's language regarding detailed billing. The Commission should adopt AT&T Florida's language for Resale Section 5.2.1, because it will provide CA with the detailed billing information on resale lines at no cost. Based on staff's analysis, AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that AT&T Florida's language regarding detailed billing be included in the ICA.

Issue 62A: Should the ICA state that OS/DA services are included with resale services? (CIS § 1.2.2)

Recommendation: Yes. Staff recommends that the ICA state that OS/DA services are included with resale services. (Williams)

Position of the Parties

CA: No. CA believes that it should not be compelled to offer AT&T OS/DA service to either its facilities-based customers or its resale customers. CA notes that AT&T retail customers have the ability to limit pay-per-use calls such as OS/DA, so CA should have the same ability.

AT&T Florida: Yes. In a resale situation, a CLEC purchases in its entirety the existing retail service being provided to the CLEC's customer. AT&T's OS/DA services are provided in conjunction with AT&T's retail services and therefore automatically provided with resale services.

Staff Analysis: Issue 62A concerns whether AT&T Florida will automatically provide Operator Services (OS) and Directory Assistance Services (DA) when CA purchases AT&T Florida's retail services for resale. The applicable contract language is in CIS 1.2.2.

Parties Arguments

CA

CA believes that it should not be compelled to offer AT&T Florida OS/DA service to either its facilities-based customers or its resale customers. CA notes that AT&T Florida retail customers have the ability to limit pay-per-use calls such as OS/DA, so CA should have the same ability. (CA BR 184)

AT&T Florida

AT&T Florida witness Kemp states that because AT&T Florida's retail local service includes operator services and directory assistance ("OS/DA"), each resale line comes equipped with OS/DA services. CA obtains them simply by purchasing the resold service of a retail customer. (TR 597).

Because AT&T Florida's retail local service includes operator services and directory assistance (OS/DA), each resale line comes equipped with OS/DA services. CA obtains them simply by purchasing the resold service of a retail customer. (TR 597) Therefore, AT&T Florida proposes to add language in Attachment Customer Information Services ("CIS") §1.2.2 making clear that "OS/DA Services are included on Resale Services purchased under this Agreement." AT&T Florida believes the Commission should adopt AT&T Florida's proposed language in CIS §§1.2.2 and 1.2.3.3

Analysis

AT&T Florida argues that in a resale situation, a CLEC purchases in its entirety the existing retail service being provided to the CLEC's customer. Since AT&T Florida's OS/DA services are provided in conjunction with AT&T Florida's retail services, they are automatically provided with resale services purchased by any CLEC. As part of a resale service offering, the CLEC purchases the retail service in its entirety which includes services such as dial-tone, 911, and OS/DA in a bundled package. (AT&T Florida BR 183)

In the context of a facilities-based carrier, OS/DA service does not come equipped on a facilities-based end users line. In a facilities-based arrangement, the CLEC must order OS/DA service for each end-user. Staff agrees with AT&T Florida's position that in a resale arrangement, OS/DA is part of the package of services offered and that it must be requested to be taken off by purchasing blocking service at the applicable charge. (TR 70-71, TR 597) Based on staff's analysis, AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that the ICA state that OS/DA services are included with resale services.

Issue 62B: Does CA have the option of not ordering OS/DA service for its resale end users? (CIS § 1.2.3.3)

Recommendation: No. Staff recommends that CA does not have the option of not ordering OS/DA service for its resale end users. (Williams)

Position of the Parties

CA: No. CA believes that it should not be compelled to offer AT&T OS/DA service to either its facilities-based customers or its resale customers. CA notes that AT&T retail customers have the ability to limit pay-per-use calls such as OS/DA, so CA should have the same ability.

AT&T Florida: No. If CA does not want OS/DA, it can order blocking, just as AT&T's own retail customers are required to do to block OS/DA.

Staff Analysis: This issue concerns whether AT&T Florida will automatically provide Operator Services (OS) and Directory Assistance Services (DA) when CA purchases AT&T Florida's retail services for resale. When a CLEC acts as a reseller of AT&T Florida retail services, the CLEC purchases in its entirety the existing retail service being provided to the customer the CLEC acquires.

Because AT&T Florida's retail local service includes OS and DA, each resale line comes equipped with OS/DA services. CA obtains them simply by purchasing the resold service of a retail customer. (TR 597) The applicable contract language is CIS 1.2.3.3.

Parties Arguments

CA

CA believes that it should not be compelled to offer AT&T Florida OS/DA service to either its facilities-based customers or its resale customers. CA notes that AT&T Florida retail customers have the ability to limit pay-per-use calls such as OS/DA, so CA should have the same ability. (CA BR 184)

AT&T Florida

AT&T Florida proposes to add language in CIS § 1.2.3.3 making clear that CA is *not* required to order OS/DA Services from AT&T Florida for *facilities-based* end users. If CA wants to remove the OS/DA service from a resale line, it must order the appropriate blocking for each line and pay the associated charges. (TR 597)

AT&T Florida states this is consistent with how AT&T Florida provides OS/DA services to its own retail customers: the customer must order blocking if it wishes to remove OS/DA services. (EXH 38, p. 59)

AT&T Florida witness Kemp in contrast, argues that when CA is providing retail services to its own facilities-based end users, it is not required to order OS/DA services from AT&T Florida or to provide such services to its end users. (TR 597) AT&T Florida believes its proposed language for CIS § 1.2.3.3 clarifies this distinction.

Analysis

AT&T Florida argues that in a resale situation, a CLEC purchases in its entirety the existing retail service being provided to the CLEC's customer. Since AT&T Florida's OS/DA services are provided in conjunction with AT&T Florida's retail services, they are automatically provided with resale services CA purchases.

Staff agrees with AT&T Florida's position that OS/DA is part of package of wholesale services offered and must be requested to be taken off at an applicable charge. (TR507) If CA desires to remove the OS/DA service from a resale line, it must order the appropriate blocking and pay any applicable charges.

Staff agrees with AT&T Florida's position that in a resale arrangement, OS/DA is part of the package of services offered and that it must be requested to be taken off by purchasing blocking service at the applicable charge. (TR 507) Based on staff's analysis, AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that CA does not have the option of not ordering OS/DA service for its resale end users.

Issue 64: What time interval should be required for submission of directory listing information for installation, disconnection, or change in service? (CIS § 6.1.5)

Recommendation: Staff recommends that the time interval for submission of directory listing information for installation, disconnection, or change in service should be one business day. (Williams)

Position of the Parties

CA: None. CA believes that the timing of or decision to order directory listings rests solely with the End User Subscriber, and not with CA or AT&T.

AT&T Florida: AT&T must receive listing information from CA within one (1) business day of installation or other change in service to ensure that the listed customer's information is timely and accurately reflected in the listing database.

Staff Analysis: Issue 64 concerns how long CA should be given to submit directory listing information to AT&T Florida's Directory Assistance (DA) database following the installation, disconnection, or change in service to a customer line. This new listing information might include new subscriber listings, changes to existing listings or disconnection of existing listings. The applicable contract language is CIS 6.1.5.

Parties Arguments

CA

CA argues that AT&T Florida's retail subscribers are not required to order directory listings when they order local service. (CA BR 185) AT&T Florida also no longer publishes white pages directories at all, and it has offered no reason for this proposed requirement. (CA BR 185) Further, CA argues that AT&T Florida admits that there is no legal basis for this requirement. Therefore, CA believes that AT&T Florida's language is discriminatory and unreasonable. (TR 679)

AT&T Florida

AT&T Florida argues that CA should be required to submit directory listing change information within one (1) business day of the installation, disconnection or change in service, as reflected in AT&T Florida's proposed language for CIS §6.1.5. (AT&T Florida BR 185) This timeline ensures that the directory information is up-to-date and that callers are able to reach a customer whose service has recently changed. AT&T Florida further argues that, by contrast, CA takes the position that the ICA should not provide any timeframe in which CA must submit necessary directory assistance changes. (AT&T Florida BR 185)

AT&T Florida believes CA's position is unreasonable, would negatively impact CA's customers and any consumers trying to reach CA's customers, as well as AT&T Florida, and should be rejected. AT&T Florida contends that it works diligently to maintain the accuracy of the DA database. This requires that information be updated as soon as possible to ensure that customers seeking directory assistance have the most accurate information available. The sooner the database is updated the better, because it is unlikely the new customer will provide updated information to all those who may wish to reach the customer. Those wishing to reach the customer can obtain directory listing information only if it is in the DA database. AT&T Florida set the one business day requirement to ensure the same level of quality for accurate directory listings that AT&T Florida provides for itself and for other CLECs. In order to provide consistent service to CA, it is necessary for AT&T Florida to obtain listing information from CA within one business day of installation. It takes up to 72 hours to process the listings and AT&T Florida requests submission within one business day from all CLECs. (TR 599, TR 630)

If CA delays submitting customer directory information, CA's end users may be harmed by the inability of others to find the CA customer's current number. (TR 599, TR 600) CA's delay would also cause additional administrative burdens to AT&T Florida. For delayed submissions, AT&T Florida would place the directory listing service orders in pending status. If the pending service orders are not resolved timely by CA, AT&T Florida would have to contact CA in an attempt to resolve the issue. This effort could be avoided if CA submits the directory listing information within the timeframe set out in the ICA. (TR 600)

CA suggests in its Response to Staff Interrogatory 27 (EXH 26, p. 29), that neither CA nor AT&T Florida should have the right to force an end user to place a listing. CA states that AT&T Florida witness Kemp proposes language that would not have this effect. Witness Kemp testified that the contract language only applies where there is a change "affecting the [directory assistance] database or the directory listing of a CLEC End User." If the CA end user does not want a listing, there is nothing for CA to submit and the deadline in CIS §6.1.5 does not apply. (TR 629)

AT&T Florida concludes that for these reasons, the Commission should reject CA's proposal that it have no specific timelines for submission of DA listing information and adopt AT&T Florida's language in CIS §6.1.

Analysis

This issue addresses the length of time CA should have to submit directory listing information to AT&T Florida for input into the database following the installation, disconnection, or change in service. Having the information forwarded to AT&T Florida within one business day would assist in assuring that the directory information is accurate.

AT&T Florida's internal company procedures and practice requires the one day change for customer service quality purposes. Further, AT&T Florida has the same requirement for all CLECs it has entered agreements with.

AT&T Florida argues that it must receive listing information from CA within one business day of installation or other change in service to ensure that the listed customer's information is timely and accurately reflected in the listing database. (AT&T Florida BR 185) AT&T Florida further argues that AT&T Florida and other CLECs in Florida comply with this requirement and to allow CA to provide information at random intervals would disrupt and degrade the accuracy of OS/DA and directory listing database information for AT&T Florida as well as CLECs. (AT&T Florida BR 186)

Staff is persuaded by AT&T Florida's argument that to allow CA to provide information at random intervals would disrupt and degrade the accuracy of OS/DA and directory listing database information for AT&T Florida as well as CLECs. (TR 599, 630, EXH 26, p. 29) It would also be inconsistent and unfair to CA's customers to allow submittal beyond one business day. Based on staff's analysis, AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that the time interval for submission of directory listing information for installation, disconnection, or change in-service should be one business day be adopted.

Issue 65: Should the ICA include CA's proposed language identifying specific circumstances under which AT&T Florida or its affiliates may or may not use CA's subscriber information for marketing or winback efforts? (CIS § 6.1.9.1)

Recommendation: No. Staff recommends that the ICA not include CA's proposed language identifying specific circumstances under which AT&T Florida or its affiliates may or may not use CA's subscriber information for marketing or winback efforts. (Williams)

Position of the Parties

CA: Yes. CA believes that its language is consistent with FCC regulations regarding CPNI and slamming. AT&T has cited no legal or regulatory decision to support its position, and has not stated what it intends to use CA's subscriber information for which would be prevented by CA's language.

AT&T Florida: No. Section 222 of the Communications Act governs the uses to which AT&T and its affiliates may put customer information. AT&T's language appropriately requires compliance with Section 222; CA's language goes beyond that and attempts to impose obligations and limitations on AT&T that are not consistent with Section 222.

Staff Analysis: This issue addresses whether Section 222 of the Act should govern the uses to which AT&T Florida and its affiliates may use customer information obtained from CA or CA's proposed language identifying specific circumstances under which AT&T Florida or its affiliates may or may not use CA's subscriber information for marketing or winback efforts. The applicable contract language is CIS 6.1.9.1. AT&T Florida's language specifically states that subscriber listing information received from CA will be cared for in accordance with the provisions of Section 222 of the Act. Section 222, in part, clearly states that a telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing telecommunications service shall not use the information for its own marketing efforts. Staff believes Section 222 is clear and addresses CA's concern. Further, staff believes it is more appropriate to reference adherence to Section 222's applicable language, instead of adding language to restate the Act's intent. CA's proposed language, as presented in CIS 6.1.9.1 states:

> Neither AT&T-21STATE nor any of its affiliates shall use CLEC subscriber information for any marketing or "winback" efforts or campaigns, unless 1. the subscriber information is provided in the aggregate form along with all AT&T-21STATE subscriber information and 2. CLEC subscribers cannot be identified and separated from the information provided.

Parties Arguments

CA

CA states that AT&T Florida has cited no legal or regulatory decision to support its position, and has not stated what it intends to use CA's subscriber information for which would be prevented by CA's language.

AT&T Florida

AT&T Florida argues that its proposed language appropriately points to 47 U.S.C. §222, which is the federal law that governs the uses to which AT&T Florida and its affiliates may use customer proprietary network information (CPNI). Section 222 includes specific requirements imposed on telecommunications carriers regarding the protection and disclosure of CPNI and sets forth specific exceptions to the general prohibitions against its disclosure. (AT&T Florida BR 187)

AT&T Florida further argues that CA's proposed language attempts to add additional criteria that must be met to enable AT&T Florida or its affiliates to use CA subscriber information. AT&T Florida states that this additional language is not appropriate or necessary because the three sections of the Act referenced in CIS §6.1.9.1 (Sections 251 and 271 as agreed by the parties, and Section 222 as proposed by AT&T Florida) sufficiently address the parties' rights and obligations; therefore, no additional details regarding scenarios or criteria are necessary. (AT&T Florida BR 187)

AT&T Florida presents that CA claims that its position complies with current FCC orders regarding CPNI as well as Section 222 of the Act. (TR 72). AT&T Florida argues, however, that CA makes AT&T Florida's point by acknowledging that the language of the agreement ought to comply with Section 222 of the Act (and the FCC orders regarding CPNI that are promulgated pursuant to Section 222). AT&T Florida further argues that is precisely what AT&T Florida's language achieves, because it points directly to 47 U.S.C. §222; no additional language or criteria are necessary or proper. (AT&T Florida BR 187)

Further, AT&T Florida points out that CA states that it "believes" its language complies with "current" FCC orders. AT&T Florida argues that even if that is true, that is not sufficient. The language of the agreement should comply with Section 222 and FCC orders as they may exist now or may exist in the future. (AT&T Florida BR 187)

Analysis

Staff agrees with AT&T Florida's argument that Section 222 of the Act governs the uses to which AT&T Florida and its affiliates may or may not use customer information. AT&T Florida's language appropriately requires compliance with Section 222. In contrast, CA's language introduces specifics that are not necessary and that may conflict with and unnecessarily complicate the intent of Section 222.

Consistent with AT&T Florida, CA agrees that Section 222 governs the use of customer information by AT&T Florida. However, CA believes it is necessary to add additional language it developed to govern the use of customer information.

Staff is concerned that adding such language may inadvertently create confusion on the requirements. Further, staff does not believe additional language, beyond what is presented in Section 222, is necessary considering that the FCC developed the language for the specific purpose of preventing abuses pertaining to the use of customer information by the ILEC.

In response to staff's First Set of Interrogatories, AT&T Florida provided an analysis of how subscriber listing information received from a CLEC is to be handled and cared for in accordance with Section 222 and any other application federal or state regulations and orders. (EXH 36, p. 621) AT&T Florida explains that Section 222 defines subscriber list information as a carrier's subscriber's name, telephone number, address, or primary advertising classification that carrier has published. AT&T Florida also points out that Section 251 and Section 271 of the Act requires it to provide nondiscriminatory access to telephone numbers and directory listing, among other things. To ensure the directory listing is provided in a nondiscriminatory manner, AT&T Florida provides the subscriber information intermingled with AT&T Florida and other CLEC subscriber list information. The intermingled data provides the list of subscribers, but the recipient is unable to identify the subscriber's provider. AT&T Florida further reiterates that it does not use the information for marketing purposes. (EXH 36, p. 621)

Staff does not believe CA presents a sound argument as to why reference to adherence to Section 222 is not sufficient. If AT&T Florida's language complies with Section 222 as CA acknowledges, there is no reason for additional language.

Further, the Commission has formally acknowledged the applicability of Section 222 related to AT&T Florida's sharing wholesale information received from CLECs with its retail division. Specifically, the Commission has affirmed that AT&T Florida cannot share carrier-to-carrier information acquired from its wholesale division with its retail division.[97]

Lastly, in response to a staff interrogatory, AT&T Florida represents that it has not been found in violation of applicable laws, orders, or rules relating to marketing or winback campaigns. These incudes matters before the FCC, the Commission, and other public utility commissions. (EXH 36, Bates No. 622)

Staff is persuaded by AT&T Florida's argument that Section 222 of the Act governs how AT&T Florida and its affiliates may or may not use customer information. (TR 72) Based on staff's analysis, AT&T Florida's proposed language is appropriate.

Conclusion

Staff recommends that the ICA not include CA's proposed language identifying specific circumstances under which AT&T Florida or its affiliates may or may not use CA's subscriber information for marketing or winback efforts.

[97] Docket No. 020119-TP, In re: Petition for expedited review and cancellation of BellSouth Telecommunications, Inc.'s Key Customer Promotional tariffs and for investigation of BellSouth's promotional pricing and marketing practices, by Florida Digital Network, Inc., p. 18, issued June 28, 2002.

Issue 66: For each rate that CA has asked the Commission to arbitrate, what rate should be included in the ICA? (Pricing Sheet)

Recommendation: For each rate that CA has asked the Commission to arbitrate, staff recommends the rate that should be included in the ICA is the rate proposed by AT&T Florida. (Long)

Position of the Parties

CA: The Commission last reviewed the instant rates over ten years ago, at which time the ILEC was BellSouth, a much smaller entity. To the extent any of CA's proposed rates are subject to an AT&T TELRIC cost study, the Commission should order a new proceeding to investigate those rates.

AT&T Florida: The AT&T rates that CA disputes are the standard rates that AT&T charges CLECs in Florida. They are (1) TELRIC-based rates that the Commission has approved; (2) resale prices that reflect the Commission-established wholesale discount; or (3) market-based prices for products that are not subject to regulation.

Staff Analysis: This issue addresses the rates disputed between the parties. In its Petition, CA disputes the rates for 217 separate elements from the proposed ICA. CA lists these as Issues 92 through 309. CA also lists AT&T Florida's and CA's proposed rates for each element in Exhibit C to its Petition. These rate disputes were subsequently consolidated into the instant issue. CA relies primarily on its estimate of reasonableness and Verizon Florida's prices in selected ICAs as the basis for its proposed rates. AT&T Florida bases its proposed rates on previous Commission orders for UNEs and resale, and its own market rates for elements that are not on the FCC's UNE list.

Parties' Arguments

CA

CA presents three primary arguments regarding this issue. First, CA witness Ray offers what he considers more reasonable rates than those proposed by AT&T Florida. In particular, witness Ray "suggested alternate rates that are similar to those charged in Florida by Verizon for the same rate element. For other charges, particularly those that are not found in Verizon's ICAs or do not appear to be cost-based, CA has suggested rates that are more commercially reasonable than those suggested by AT&T." (TR 72)

Witness Ray's second argument is that UNE and collocation rates should be updated through a new generic cost proceeding. Witness Ray agrees that UNE rates are appropriately determined in generic proceedings. (TR 157, EXH 46, Bates Nos. 1628-1629) Witness Ray states that "CA would accept this as a suitable remedy for all TELRIC-based charges raised by its petition and drop them from the case." (TR 132)

Witness Ray's final argument concerning this issue is "(t)o the extent that the Commission decides that it does not have authority over any given rate element, CA believes that the rate should not be included in this agreement and is more appropriately placed in a separate commercial agreement between the parties." (TR 133)

AT&T Florida

AT&T Florida's witnesses Kemp and Pellerin also offer three main arguments in support of their rate proposals. Witness Kemp testifies on the rates for UNEs, commingling, EELs, collocation, and branding for directory assistance and operator services. (TR 601) Witness Pellerin testifies on the rates for local interconnection. (TR 264)

First, witnesses Kemp and Pellerin argue that most of the rates they propose are ones established in previous generic Commission proceedings. Witness Kemp states that "(t)he Commission previously approved AT&T Florida's UNE rates in Docket No. 990649-TP, Order No. PSC-01-2051-FOF-TP and Docket No. 990649A-TP, Order No. PSC-02-1311-FOF-TP. Collocation rates were previously approved in Dockets Nos. 981834-TP and 990321-TP, Orders Nos. PSC-04-0895-FOF-TP and PSC-04-0895A-FOF-TP." (TR 601-602) Witness Pellerin argues that Docket No. 990649-TP, Order No. PSC-01-2051-FOF-TP was also the basis for AT&T Florida's proposed local interconnection rates. (TR 264) Witnesses Kemp and Pellerin provide a spreadsheet including the basis for each of AT&T Florida's proposed rates. (EXH 36, Bates Nos. 645-655)

Witness Pellerin offers one exception to her argument that the local interconnection rates were all set in the aforementioned Commission order: DS0 Trunk Installation Charges. Witness Pellerin explains these charges as follows:

> AT&T Florida's switches are equipped with dedicated DS1 trunk ports for interconnection trunking. DS1 trunk ports can accommodate up to 24 individual DS0 trunks, and AT&T Florida charges for installation of trunks on an individual basis. Thus, if a CLEC requires only 12 trunks, AT&T Florida assesses nonrecurring charges to install 12 trunks on a single order (one initial at $21.73, plus 11 additional at $8.19) rather than for the entire DS1 trunk port. The installation trunk charges per DS0 on the Pricing Sheets are based on an April 2000 cost study for DS1 trunk ports, divided by 24. AT&T Florida was unable to identify the Commission order number approving these charges. The DS0 interconnection trunk installation charges AT&T Florida proposes for CA's ICA are the same charges AT&T Florida assesses to all CLECs in Florida.

(TR 264-265)

Witnesses Kemp and Pellerin also argue that for elements that are not UNEs and therefore not subject to TELRIC-based rates, AT&T Florida proposed market based rates. These rates include operator services and branding for directory assistance. (TR 602, EXH 36, Bates No. 623)

Finally, witnesses Kemp and Pellerin testify that CA should not be entitled to arbitrate rates in this proceeding. (TR 266, TR 602) Witness Pellerin supports this argument by stating that the Commission previously refused a similar request by Florida Digital Networks, Inc. in an arbitration with Sprint Florida. (TR 266) At hearing, both AT&T Florida witnesses testified that rates should be set in a generic proceeding. (TR 397, TR 699) Neither witness proposes that such a proceeding be conducted at this time. (TR 397, TR 700)

Analysis

This issue addresses the rates at issue in this proceeding, specifically the 217 rate elements CA contested in its Petition. Staff believes the evidence in the record supports AT&T Florida's proposed rates.

CA witness Ray offers rates based on one or more of the following: rates based on Verizon Florida's or other ILECs' rates in other ICAs, Verizon Florida's rates actually charged to other CLECs but not in an ICA, "parity" with 2-wire rates (for some 4-wire rate elements), local interconnection elements that should not be charged at all, or a subjective "reasonableness" standard. Staff does not believe these arguments sufficiently support CA's proposed rates. (EXH 31, Bates Nos. 233-254)

While Verizon Florida has rates different from AT&T Florida's rates in its ICAs, and some rates are lower, staff does not believe that Verizon's UNE rates have any bearing on AT&T Florida's rates. The rates in this proceeding, with the exception of custom branding for directory assistance and operator services, are required to be based on TELRIC per federal statutes and FCC rules.[98] Since the rates are required to be cost-based, substituting Verizon Florida's rates for AT&T Florida's will not satisfy the federal requirements. CA witness Ray admits that cost-based rates for interconnection and network elements are not necessarily equal for two ILECs in the same state. (EXH 34, Bates No. 488) AT&T Florida witness Kemp argues that "Verizon's rates are based on Verizon's costs, which have nothing to do with AT&T Florida's costs." (TR 631) AT&T Florida witness Pellerin makes a similar statement. (TR 308) Staff agrees that AT&T Florida's and Verizon Florida's wholesale costs are not related.

Similarly, staff believes witness Ray's other grounds for CA's proposed rates do not properly reflect AT&T Florida's costs to provide the services. Staff believes the record supports the argument that cutting the 4-wire rates in half for 2-wire elements does not accurately reflect the 2-wire costs. (EXH 38, Bates No. 759) Staff also believes that CA witness Ray provides no evidentiary support for his statement that some of CA's suggested rates are "more commercially reasonable." (TR 72)

CA witness Ray also argues for a new TELRIC cost study to be performed. (TR 132) Witness Ray further argues that retail costs have "plummeted" since the last cost study was performed and that AT&T Florida's wholesale costs are likely lower now. (EXH 27, Bates No. 60) Witness Ray further supports his request for a new cost study by stating that the existing costs are based on a cost study by AT&T Florida's predecessor, BellSouth, and that AT&T Florida is much bigger now and has increased purchasing power. (EXH 46, Bates Nos. 1629-1630)

AT&T Florida's witness Pellerin counters that AT&T Florida is not advocating a generic cost proceeding be conducted. Such a proceeding would likely be lengthy and resource-intensive. (EXH 47, Bates Nos. 1799-1803) Also, witness Pellerin states that there is no way to determine whether prices would go up or down as a result of such a proceeding. (EXH 47, TR 397, TR 400)

[98] 47 U.S.C. § 252(d)(1) and 47 C.F.R. § 51.505

Staff believes that a new generic TELRIC cost docket would likely be lengthy and resource intensive. While CLECs could petition the Commission to conduct such a proceeding, a generic cost study is not appropriate in a two-party arbitration. AT&T Florida witness Pellerin argues that the Commission has previously declined to arbitrate rates it already set in a generic proceeding.[99]

CA witness Ray also argues that rates not subject to TELRIC price regulation should not be in the ICA at all. (TR 133) AT&T Florida witness Pellerin argues that while some agreements do not have these prices in them, it is more efficient to include them in an ICA both because it makes it clearer to the CLEC what AT&T Florida's rates are for the services, and it is "a lot of trouble to draft and administer a commercial agreement for something that could be a single entry in an ICA." (EXH 47, Bates No. 1798)

Staff is persuaded by witness Pellerin that the rates for custom branding of directory assistance and operator services can be included in the proposed ICA. Although these elements are not UNEs and are not directly regulated by this Commission, staff is persuaded by AT&T Florida's argument that it is more expedient to include them in this agreement than to execute a separate commercial agreement for just this purpose.

Staff notes that CA reiterates in its brief a concern over a possible typographical error in AT&T Florida's Pricing Sheet. (CA BR 188) CA witness Ray contends that the UNE element Dark Fiber–Interoffice Transport, USOC code UDF14, appeared to have a per-mile charge instead of a per-termination charge. (TR 132) The Pricing Sheet attached to witness Pellerin's testimony listed USOC UDF14 on line 286 with "Per Four Fiber Strands, Per Termination." It appears AT&T Florida's proposed Pricing Sheet now lists the charge as applying per termination, which is consistent with CA's expectation for this element. (EXH 2)

Conclusion

Staff recommends for each rate that CA has asked the Commission to arbitrate, the rate that should be included in the ICA is the rate proposed by AT&T Florida.

[99] Order No. PSC-06-0027-FOF-TP, January 10, 2006, in Docket No.041464-TP, In re: Petition for arbitration of certain unresolved issues associated with negotiations for interconnection, collocation, and resale agreement with Florida Digital Network, Inc. d/b/a FDN Communications, by Sprint-Florida, Incorporated.

Issue 67: Should this docket be closed?

Recommendation: No, the parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission staff's verification that the final arbitration agreement is in accordance with the Commission's decisions in this docket and with Section 252 of the Telecommunications Act of 1996, after which the docket should be closed administratively.

Staff Analysis: The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission staff's verification that the final arbitration agreement is in accordance with the Commission's decisions in this docket and with Section 252 of the Telecommunications Act of 1996, after which the docket should be closed administratively.

Attachment A
Proposed Parties' Language Related to Issues

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 1 UNE 4.1	Is AT&T Florida obligated to provide UNEs for the provision of Information Services?	4.1 AT&T-21STATE will provide access to UNEs for <u>the provision</u> by <u>CLEC of a Telecommunications Service (Act, Section 251(c)(3)</u>.	4.1 AT&T-21STATE will provide access to UNEs for use by CLEC in any technically feasible manner.	AT&T Florida Proposed Language
Issue 2 Collo 1.7.3	Is CA entitled to become a Tier 1 Authorized Installation Supplier (AIS) to perform work outside its collocation space?	1.7.3 The Collocation terms and conditions within this Attachment are contingent upon Collocator doing its own work through the use of an AT&T-21STATE Approved Installation Supplier (AIS). If Collocator applies to become an AT&T-21STATE Approved Installation Supplier (AIS) for the purpose of performing work related to its own collocation(s), AT&T-21STATE shall act on Collocator's application within a reasonable period of time using criteria no more restrictive than applied by AT&T- 21STATE to any other person applying to be an AIS.	1.7.3 The Collocation terms and conditions within this Attachment are contingent upon Collocator doing its own work through the use of an AT&T-21STATE Approved Installation Supplier (AIS). Collocator shall be entitled to become an AT&T-21STATE Approved Installation Supplier (AIS) within a reasonable period of time for the purpose of performing work related to its own collocation(s), using criteria no more restrictive than that applied by AT&T-21STATE to any other AIS.	AT&T Florida Proposed Language
Issue 3 Collo 3.17.3.1	When CA supplies a written list for subsequent placement of equipment, should an application fee be assessed?	3.17.3.1 The Collocator shall furnish to AT&T-21STATE a written list in the form of an attachment to the original Equipment List for the subsequent placement of equipment in its Dedicated or Virtual Collocation Space. When the Collocator's equipment is not listed in the approved All Equipment List (AEL) the equipment will be reviewed by AT&T-21STATE and written approval or denial of the equipment will be forwarded to the Collocator. The additional equipment will also be reviewed as to whether it is "necessary equipment". Only if the equipment passes both reviews may it be collocated. AT&T Florida shall not charge any separate fee for review under this subsection.	3.17.3.1 The Collocator shall furnish to AT&T-21STATE a written list in the form of an attachment to the original Equipment List for the subsequent placement of equipment in its Dedicated or Virtual Collocation Space. When the Collocator's equipment is not listed in the approved All Equipment List (AEL) the equipment will be reviewed by AT&T-21STATE and written approval or denial of the equipment will be forwarded to the Collocator. The additional equipment will also be reviewed as to whether it is "necessary equipment". Only if the equipment passes both reviews may it be collocated. CLEC shall not be charged for submission of the attachment to the Equipment List or for this review process,	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
			regardless of outcome.	
Issue 4a Collo 3.20.1	If CA is in default, should AT&T Florida be allowed to reclaim collocation space prior to conclusion of a dispute regarding the default?	3.20.1 If the Collocator shall materially default in performance of any provision herein, and such the default shall continue for sixty (60) calendar days after receipt of AT&T- 21STATE's written Notice, or if the Collocator is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, AT&T-21STATE may, immediately or at any time thereafter, without notice or demand, enter and repossess the Dedicated Space, expel the Collocator and any claiming under the Collocator, remove the Collocator's property and dispose of such abandoned equipment. Also, services provided pursuant to this Attachment will be terminated without prejudice to any other remedies.	3.20.1 If the Collocator shall default in performance of any provision herein, and the default shall continue for sixty (60) calendar days after receipt of AT&T-21STATE's written Notice, or if the Collocator is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, AT&T-21STATE may, immediately or at any time thereafter, without notice or demand, enter and repossess the Dedicated Space, expel the Collocator and any claiming under the Collocator, remove the Collocator's property and dispose of such abandoned equipment. Also, services provided pursuant to this Attachment will be terminated without prejudice to any other remedies. This provision shall not apply until the conclusion of any dispute resolution process initiated by either party under this agreement where CLEC has disputed the alleged default, including any regulatory proceeding, litigation or appellate proceeding.	AT&T Florida Proposed Language
Issue 4b Collo 3.20.2	Should AT&T Florida be allowed to refuse CA's applications for additional collocation space or service or to complete pending orders after AT&T Florida has notified CA it is in default of its obligations as Collocator but prior to conclusion of a dispute regarding the default?	3.20.2 AT&T-21STATE may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service for the Collocator at any time after sending the Notice required by the preceding Section.	3.20.2 AT&T-21STATE may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service for the Collocator at any time after sending the Notice required by the preceding Section. This provision shall not apply until the conclusion of any dispute resolution process initiated by either party under this agreement where CLEC has disputed the alleged default, including any regulatory proceeding, litigation or appellate proceeding.	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 5 Collo 4.6.2	Should CA be required to provide AT&T Florida with a certificate of insurance prior to starting work in CA's collocation space on AT&T Florida's premises?	4.6.2 A certificate of insurance stating the types of insurance and policy limits provided the Collocator must be received prior to commencement of any work. If a certificate is not received, AT&T-21STATE will notify the Collocator, and the Collocator will have five (5) Business Days to cure the deficiency. If the Collocator does not cure the deficiency within five (5) Business Days, Collocator hereby authorizes AT&T-21STATE, and AT&T- 21STATE may, but is not required to, obtain insurance on behalf of the Collocator as specified herein. AT&T-21STATE will invoice Collocator for the costs incurred to so acquire insurance.	4.6.2 A certificate of insurance stating the types of insurance and policy limits provided the Collocator must be received prior to commencement of any work. If a certificate is not received, AT&T-21STATE will notify the Collocator, and the Collocator will have thirty (30) days to cure the deficiency. If the Collocator does not cure the deficiency within thirty (30) days and the Collocator has already commenced work, Collocator hereby authorizes AT&T-21STATE, and AT&T-21STATE may, but is not required to, obtain insurance on behalf of the Collocator as specified herein. AT&T-21STATE will invoice Collocator for the costs incurred to so acquire insurance.	AT&T Florida Proposed Language
Issue 6 Collo 4.11.3.4	Should AT&T Florida be allowed to recover its costs when it erects an internal security partition to protect its equipment and ensure network reliability and such partition is the least costly reasonable security measure?	4.11.3.4 AT&T-21STATE may use reasonable security measures to protect its equipment. In the event AT&T-21STATE elects to erect an interior security partition in a given Eligible Structure to separate its equipment, AT&T-21STATE may recover the costs of the partition in lieu of the costs of other reasonable security measures if the partition costs are lower than the costs of any other reasonable security measure for such Eligible Structure. In no event shall a Collocator be required to pay for both an interior security partition to separate AT&T-21STATE's equipment in an Eligible Structure and any other reasonable security measure for such Eligible Structure. If AT&T-21STATE elects to erect an interior security partition and recover the cost, it must demonstrate to the Physical Collocator that other reasonable security methods cost more than an interior security partition around AT&T-21STATE's equipment at the time the price quote is given.	4.11.3.4 AT&T-21STATE may use reasonable security measures to protect its equipment. In the event AT&T-21STATE elects to erect an interior security partition in a given Eligible Structure to separate its equipment, AT&T-21STATE may recover the costs of the partition in lieu of the costs of other reasonable security measures if the partition costs are lower than the costs of any other reasonable security measure for such Eligible Structure. In no event shall a Collocator be required to pay for both an interior security partition to separate AT&T-21STATE's equipment in an Eligible Structure and any other reasonable security measure for such Eligible Structure. If AT&T-21STATE elects to erect an interior security partition and recover the cost, it must demonstrate to the Physical Collocator that other reasonable security methods cost more than an interior security partition around AT&T- 21STATE's equipment at the time the price quote is given. This provision shall only apply if CLEC or any agent of CLEC has been proven to have committed any wrongdoing or violation of this agreement on AT&T property, and the measures taken by AT&T for which recovery is sought would protect AT&T from that wrongdoing or breach	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
			by CLEC in the future.	
Issue 7a Collo 7.4.1	Under what circumstances may AT&T Florida charge CA when CA submits a modification to an application for collocation, and what charges should apply?	7.4.1 If a modification or revision is made to any information in the Application after AT&T-21STATE has provided the Application response and prior to a BFFO, with the exception of modifications to (1) Customer Information, (2) Contact Information or (3) Billing Contact Information, whether at the request of Collocator or as necessitated by technical considerations, the Application shall be considered a new Application and handled as a new Application with respect to the response and provisioning intervals. AT&T-21STATE will charge Collocator the appropriate Application/Augment fee associated with the level of assessment performed by AT&T-21STATE.	7.4.1 If a modification or revision is made to any information in the Application after AT&T- 21STATE has provided the Application response and prior to a BFFO, with the exception of modifications to (1) Customer Information, (2) Contact Information or (3) Billing Contact Information, whether at the request of Collocator or as necessitated by technical considerations, the Application shall be considered a new Application and handled as a new Application with respect to the response and provisioning intervals. AT&T-21STATE will charge Collocator the appropriate Application/Augment fee associated with the level of assessment performed by AT&T-21STATE. This provision shall not apply if AT&T- 21STATE requested or required the revision or modification, in which case no additional charges shall apply. This provision shall not apply if the revision results in no change in the number, type or size of cables, or floor space, and has no other cost impact on AT&T-21STATE.	AT&T Florida Proposed Language
Issue 7b Collo 7.5.1	When CA wishes to add to or modify its collocation space or the equipment in that space, or to cable to that space, should CA be required to submit an application and to pay the associated application fee?	7.5.1 A request from a Collocator to add or modify space, equipment, and/or cable to an existing Collocation arrangement is considered an Augment. Such a request must be made via a complete and accurate Application.	7.5.1 A request from a Collocator to add or modify space, and/or cable to an existing Collocation arrangement is considered an Augment. Such a request must be made via a complete and accurate Application. This provision shall not apply and no fee shall be due if Collocator is installing or replacing collocated equipment in its own space, without requesting any action by AT&T even if Collocator submits updated equipment designations to AT&T in accordance with this agreement.	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 8 Collo 14.2	Is 120 calendar days from the date of a request for an entrance facility, plus the ability to extend that time by an additional 30 days, adequate time for a CA to place a cable in a manhole?	14.2 If the Collocator has not left the cable in the manhole within one hundred twenty (120) calendar days of the request for entrance fiber, the Collocator's request for entrance fiber will expire and a new Application must be submitted along with applicable fees. The Collocator may request an additional thirty (30) calendar day extension by notifying AT&T-21STATE, no later than fifteen (15) calendar days prior to the end of the one hundred twenty (120) calendar day period mentioned above, of the need of the extension for the Collocator to place cable at the manhole.	14.2 If the Collocator has not left the cable in the manhole within one hundred eighty (180) calendar days of the request for entrance fiber, the Collocator's request for entrance fiber will expire and a new Application must be submitted along with applicable fees. The Collocator may request an additional ninety (90) calendar day extension by notifying AT&T-22STATE, prior to the end of the one hundred eighty (180) calendar day period mentioned above, of the need of the extension for the Collocator to place cable at the manhole.	AT&T Florida Proposed Language
Issue 9a Collo 17.1.2	Should the ICA require CA to utilize an AT&T Florida AIS Tier 1 for CLEC-to- CLEC connection within a central office?	17.1.2 The Collocator must utilize an AT&T-21STATE AIS Tier 1 to place the CLEC to CLEC connection.	17.1.2 The Collocator must utilize an AT&T-21STATE AIS Tier 1 to place the CLEC to CLEC connection, unless the Collocator and the Third Party both have collocations which are within ten (10) feet of each other and the connection can be made without making use of AT&T-21STATE common cable support structure.	AT&T Florida Proposed Language
Issue 9b Collo 17.1.5	Should CLEC-to-CLEC connections within a central office be required to utilize AT&T Florida common cable support structure?	17.1.5 The CLEC to CLEC connection shall utilize AT&T-21STATE common cable support structure and will be billed for the use of such structure according to rates in the Pricing Schedule.	17.1.5 The CLEC to CLEC connection shall utilize AT&T-21STATE common cable support structure and will be billed for the use of such structure according to rates in the Pricing Schedule, unless the Collocator and the Third Party are both have collocations which are within ten (10) feet of each other and the connection can be made without making use of AT&T-21STATE common cable support structure.	AT&T Florida Proposed Language
Issue 10 Collo 3.18.4	If equipment is improperly collocated (e.g., not previously identified on an approved application for collocation or not	3.18.4 In the event AT&T-21STATE reasonably believes that equipment proposed for collocation is not necessary for interconnection or access to 251(c)(3) UNEs or determines that the Collocator's equipment does not meet the minimum safety standards,	3.18.4 In the event it is agreed between the parties or determined following a dispute resolution proceeding initiated by either party that collocated equipment is not necessary for interconnection or access to 251(c)(3) UNEs or that the Collocator's equipment does not meet	Companies should negotiate conforming language to the vote.

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
	on authorized equipment list), or is a safety hazard, should CA be able to delay removal until the dispute is resolved?	the Collocator must not collocate the equipment until the dispute is resolved in the Collocator's favor. When AT&T Florida reasonably believes or determines that collocated equipment is not necessary for interconnection or access to 251(c)(3)UNEs, AT&T Florida shall provide written notification of such determination to Collocator. The Collocator will be given fifteen (15) Business Days from the date of the notice to remove the equipment from the collocation space. If Collocator disputes the determination, and the dispute is resolved in AT&T Florida's favor, Collocator will have fifteen (15) Business Days from the date the dispute is resolved to remove the equipment from the collocation space. If AT&T Florida determines the Collocator's equipment is improperly collocated (e.g. equipment was not previously identified on an approved application for collocation or the equipment is not on the authorized equipment list) or if it is determined that the Collocator's equipment does not meet minimum safety standards, the Collocator must remove the equipment within the (10) Business Days after notification from AT&T-21-STATE of violation of such safety standard and will be responsible for all resulting damages.	the minimum safety standards, Collocator will be given fifteen (15) Days to comply with the requirements and/or remove the equipment from the collocation space if the equipment was already collocated. If it is determined that the Collocator's equipment does not meet the minimum safety standards in Section 3.17.2 above, the Collocator must not collocate the equipment and will be responsible for removal of the equipment and all resulting damages if the equipment already was collocated improperly. (The parties shall comply with 47 C.F.R. § 51.323(c) at all times.)	
Issue 11 GT&C 2.45	Should the period of time in which the Billed Party must remit payment be thirty (30) days from the bill date or twenty (20) days from receipt of the bill?	2.45 "Bill Due Date" means thirty (30) calendar days from the bill date.	2.45 "Bill Due Date" means thirty (30) calendar days from the bill date or 20 days following receipt of a bill by the billed party, whichever is later.	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 13a GT&C 2.106	i) Should the definition of "Late Payment Charge" limit the applicability of such charges to undisputed charges not paid on time? ii) Should Late Payment Charges apply if CA does not provide the necessary remittance information?	2.106 "Late Payment Charge" means the charge that is applied when CLEC fails to remit payment for any charges by the Bill Due Date, or if payment for any portion of the charges is received from CLEC after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available or received by AT&T-21STATE as of the Bill Due Date, **or if CLEC does not submit the Remittance Information.**	2.106 "Late Payment Charge" means the charge that is applied when a CLEC fails to remit payment for any **undisputed** charges by the Bill Due Date, or if payment for any portion of the charges is received from CLEC after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available or received by AT&T- 21STATE as of the Bill Due Date.	AT&T Florida Proposed Language
Issue 13b GT&C 2.137	Should the definition of "Past Due" be limited to undisputed charges that are not paid on time?	2.137 "Past Due" means when CLEC fails to remit payment for any charges by the Bill Due Date, or if payment for any portion of the charges is received from CLEC after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available to AT&T-21STATE as of the Bill Due Date (individually and collectively means Past Due).	2.137 "Past Due" means when a CLEC fails to remit payment for any **undisputed** charges by the Bill Due Date, or if payment for any portion of the charges is received from CLEC after the Bill Due Date, or if payment for any portion of the charges is received in funds which are not immediately available to AT&T-21STATE as of the Bill Due Date (individually and collectively means Past Due).	AT&T Florida Proposed Language
Issue 13c GT&C 2.164	Should the definition of "Unpaid Charges" be limited to undisputed charges that are not paid on time?	2.164 "Unpaid Charges" means any charges billed to the Non-Paying Party that the Non-Paying Party did not render full payment to the Billing Party by the Bill Due Date, including where funds were not accessible.	2.164 "Unpaid Charges" means any **undisputed** charges billed to the Non-Paying Party that the Non-Paying Party did not render full payment to the Billing Party by the Bill Due Date, including where funds were not accessible.	AT&T Florida Proposed Language
Issue 13d GT&C 11.3.1	Should late payment charges apply only to undisputed charges?	11.3.1 If any portion of the payment is not received by AT&T-21STATE on or before the payment due date as set forth above, or if any portion of the payment is received by AT&T-21STATE in funds that are not immediately available to AT&T-21STATE, then a late payment and/or interest charge shall be due to AT&T-21STATE. The late payment and/or interest charge shall apply to the	11.3.1 If any **undisputed** portion of the payment is not received by AT&T-21STATE on or before the payment due date as set forth above, or if any portion of the payment is received by AT&T-21STATE in funds that are not immediately available to AT&T- 21STATE, then a late payment and/or interest charge shall be due to AT&T-21STATE. The late payment and/or interest charge	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		portion of the payment **not** received and shall be assessed as set forth in the applicable state tariff, or, if no applicable state tariff exists, as set forth in the Guide Book as published on the AT&T CLEC Online website, or pursuant to the applicable state law as determined by AT&T-21STATE. In addition to any applicable late payment and/or interest charges, CLEC may be charged a fee for all returned checks at the rate set forth in the applicable state tariff, or, if no applicable tariff exists, as set forth in the Guide Book or pursuant to the applicable state law.	shall apply to the portion of the payment **neither** received **nor disputed** and shall be assessed as set forth in the applicable state tariff, or, if no applicable state tariff exists, as set forth in the Guide Book as published on the AT&T CLEC Online website, or pursuant to the applicable state law as determined by AT&T- 21STATE. In addition to any applicable late payment and/or interest charges, CLEC may be charged a fee for all returned checks at the rate set forth in the applicable state tariff, or, if no applicable tariff exists, as set forth in the Guide Book or pursuant to the applicable state law.	
Issue 14a GT&C 5.1	Should the GT&Cs state that the Parties shall provide each other local interconnection services or components at no charge?	5.1 Each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with AT&T-21STATE's network as referenced in Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275, and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.	5.1 Each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with AT&T-21STATE's network as referenced in Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275, and to terminate the traffic it receives in that standard format to the proper address on its network. **Each party shall bear all costs of local interconnection facilities on its side of the Point of Interconnection ("POI"), and neither party shall charge the other party non-recurring or monthly recurring charges associated with local interconnection services or components located at the POI or on the billing party's side of the POI.** The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 14b Net Int. 4.6.4	i) Should an ASR supplement be required to extend the due date when the review and discussion of a trunk servicing order extends beyond 2 business days? ii) Should AT&T Florida be obligated to process CA's ASRs at no charge?	4.6.4 The Parties will process trunk service requests submitted via a properly completed ASR within ten (10) business days of receipt of such ASR unless defined as a major project. Incoming orders will be screened by AT&T-21STATE for reasonableness based upon current utilization and/or consistency with forecasts. If the nature and necessity of an order requires determination, the ASR will be placed in held status and a joint planning discussion conducted. The Parties agree to expedite this discussion in order to minimize delay in order processing. Extension of this review and discussion process beyond two (2) Business Days from ASR receipt **will** require the ordering Party to supplement the order with proportionally adjusted Customer Desired Due Dates. Facilities must also be in place before trunk orders can be completed.	4.6.4 The Parties will process trunk service requests submitted via a properly completed ASR within ten (10) business days of receipt of such ASR unless defined as a major project. Incoming orders will be screened by AT&T-21STATE for reasonableness based upon current utilization and/or consistency with forecasts. If the nature and necessity of an order requires determination, the ASR will be placed in held status and a joint planning discussion conducted. The Parties agree to expedite this discussion in order to minimize delay in order processing. Extension of this review and discussion process beyond two (2) Business Days from ASR receipt **may** require the ordering Party to supplement the order with proportionally adjusted Customer Desired Due Dates. Facilities must also be in place before trunk orders can be completed. **Neither party shall charge the other for ASRs related to ordering, rearranging or disconnecting Local Interconnection trunks, including charges for due date changes and ordering intervals.**	AT&T Florida Proposed Language
Issue 15 GT&C 6.2.2.14	i) RESOLVED ii) May CA exclude explosion, collapse and underground damage coverage from its Commercial General Liability policy if it will not engage in such work?	6.2.2.14 not exclude explosion, Collapse, and Underground Damage Liability must not be excluded from the Commercial General Liability policy for any Work involving explosives or any underground Work and Explosion, Collapse, and Underground Damage Liability will have the same limit requirement as the Commercial General Liability policy; and	6.2.2.14 not exclude explosion, Collapse, and Underground Damage Liability must not be excluded from the Commercial General Liability policy for any Work involving explosives or any underground Work and Explosion, Collapse, and Underground Damage Liability will have the same limit requirement as the Commercial General Liability policy **(if CLEC will engage in such work)**; and	AT&T Florida Proposed Language
Issue 16 GT&C 6.2.2.6 through 6.2.2.10	Which Party's insurance requirements are appropriate for the ICA when CA is	6.2.2 Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing equivalent coverage, covering liability arising from premises, operations, personal injury, products/completed	6.2.2 Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing equivalent coverage, covering liability arising from premises, operations, personal injury, products/completed	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
	collocating?	operations, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with limits of at least: Collocating 6.2.2.6 $10,000,000 General Aggregate; and 6.2.2.7 $5,000,000 Each Occurrence; and 6.2.2.8 $5,000,000 Personal Injury and Advertising Injury; and 6.2.2.9 $10,000,000 Products/Completed Operations Aggregate; and 6.2.2.10 $2,000,000 Damage to Premises Rented to You (Fire Legal Liability)	operations, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with limits of at least: Collocating 6.2.2.6 $2,000,000 General Aggregate; and 6.2.2.7 $2,000,000 Each Occurrence; and 6.2.2.8 $2,000,000 Personal Injury and Advertising Injury; and 6.2.2.9 $2,000,000 Products/Completed Operations Aggregate; and 6.2.2.10 $500,000 Damage to Premises Rented to You (Fire Legal Liability)	
Issue 17 GT&C 7.1.1	i) RESOLVED ii) Should AT&T Florida be obligated to recognize an assignment or transfer of the ICA that the ICA does not permit? iii) Should the ICA disallow assignment or transfer of the ICA to an Affiliate that has its own ICA in Florida?	7.1.1 CLEC may not assign, delegate, or otherwise transfer its rights or obligations under this Agreement, voluntarily or involuntarily, directly or indirectly, whether by merger, consolidation, dissolution, operation of law, Change in Control or any other manner, without the prior written consent of AT&T-21STATE, which shall not be unreasonably withheld. For any proposed assignment or transfer CLEC shall provide AT&T-21STATE with a minimum of sixty (60) calendar days advance written Notice of any assignment associated with a CLEC Company Code (ACNA/CIC/OCN) change or transfer of ownership of assets and request AT&T-21STATE's written consent. CLEC's written Notice shall include the anticipated effective date of the assignment or transfer. **Any attempted assignment or transfer that is not permitted is void as to AT&T-21STATE and need not be recognized by AT&T-21STATE unless it consents or otherwise chooses to do so for a more limited purpose.** CLEC may assign or transfer this Agreement and	7.1.1 CLEC may not assign, delegate, or otherwise transfer its rights or obligations under this Agreement, voluntarily or involuntarily, directly or indirectly, whether by merger, consolidation, dissolution, operation of law, Change in Control or any other manner, without the prior written consent of AT&T-21STATE, which shall not be unreasonably withheld. For any proposed assignment or transfer CLEC shall provide AT&T-21STATE with a minimum of sixty (60) calendar days advance written Notice of any assignment associated with a CLEC Company Code (ACNA/CIC/OCN) change or transfer of ownership of assets and request AT&T-21STATE's written consent. CLEC's written Notice shall include the anticipated effective date of the assignment or transfer. CLEC may assign or transfer this Agreement and all rights and obligations hereunder, whether by operation of law or otherwise, to an Affiliate by providing sixty (60) calendar days advance written Notice of such assignment to AT&T-21STATE; provided that such	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		all rights and obligations hereunder, whether by operation of law or otherwise, to an Affiliate by providing sixty (60) calendar days advance written Notice of such assignment to AT&T-21STATE; provided that such assignment or transfer is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain and maintain proper Commission certification and approvals) or the terms and conditions of this Agreement. Notwithstanding the foregoing, CLEC may not assign or transfer this Agreement, or any rights or obligations hereunder, to an Affiliate if that Affiliate is a Party to a separate interconnection agreement with AT&T-21STATE under Sections 251 and 252 of the Act that covers the same state(s) as this Agreement. Any attempted assignment or transfer that is not permitted is void ab initio.	assignment or transfer is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain and maintain proper Commission certification and approvals) or the terms and conditions of this Agreement.	
Issue 18 GT&C 8.2.1	Should the ICA expire on a date certain that is two years plus 90 days from the date the ICA is sent to CA for execution, or should the term of the ICA be five years from the effective date?	8.2.1 Unless terminated for breach (including nonpayment), the term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on <<txtExpDate>> (the "Initial Term"). [Two years +90 days from the date sent to CLEC for execution.]	8.2.1 Unless terminated for breach (including nonpayment), the term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire five years from the Effective Date (the "Initial Term").	CA Proposed Language
Issue 19 GT&C 8.3.1	Should termination due to failure to correct a material breach be prohibited if the Dispute Resolution process has been invoked but not concluded?	8.3.1 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection Services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written Notice	8.3.1 Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement and the provision of any Interconnection Services provided pursuant to this Agreement, at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party fails to cure such nonperformance or breach within forty-five (45) calendar days after written Notice thereof. If the	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		thereof. If the nonperforming Party fails to cure such nonperformance or breach within the forty-five (45) calendar day period provided for within the original Notice, then the terminating Party will provide a subsequent written Notice of the termination of this Agreement and such termination shall take effect immediately upon delivery of written Notice to the other Party.	nonperforming Party fails to cure such nonperformance or breach within the forty-five (45) calendar day period provided for within the original Notice, then the terminating Party will provide a subsequent written Notice of the termination of this Agreement and such termination shall take effect immediately upon delivery of written Notice to the other Party. Neither party shall terminate this Agreement or service under this provision if the alleged breach is disputed and the Dispute Resolution process has been invoked but not concluded, including all appeals.	
Issue 20 GT&C 8.4.6	Should AT&T Florida be permitted to reject CA's request to negotiate a new ICA when CA has a disputed outstanding balance under this ICA?	8.4.6 AT&T may reject a request under Section 252 to initiate negotiations for a new agreement if CLEC has an outstanding balance under this Agreement. CLEC may send a subsequent notice under Section 252 when the outstanding balance has been paid in full.	8.4.6 AT&T may reject a request under Section 252 to initiate negotiations for a new agreement if CLEC has an undisputed outstanding balance under this Agreement. CLEC may send a subsequent notice under Section 252 when the outstanding balance has been paid in full.	CA Proposed Language
Issue 22a GT&C 11.9	Should the disputing party be required to use the billing party's preferred form or method to communicate billing disputes?	11.9 If Unpaid Charges are subject to a billing dispute between the Parties, the Non- Paying Party must, prior to the Bill Due Date, give written notice to the Billing Party of the Disputed Amounts and include in such written notice the specific details and reasons for disputing each item listed in Section 13.4 below. The Disputing Party should utilize the preferred form or method provided by the Billing Party to communicate disputes to the Billing Party.	11.9 If Unpaid Charges are subject to a billing dispute between the Parties, the Non- Paying Party must, prior to the Bill Due Date, give written notice to the Billing Party of the Disputed Amounts and include in such written notice the specific details and reasons for disputing each item listed in Section 13.4 below.	AT&T Florida Proposed Language
Issue 22b GT&C 13.4	Should CA use AT&T Florida's form to notify AT&T Florida that it is disputing a bill?	13.4 Service Center Dispute Resolution-the following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement. Written Notice sent to	13.4 Service Center Dispute Resolution-the following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement.	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		AT&T-21STATE for Disputed Amounts must be made on the "Billing Claims Dispute Form".		
Issue 23a GT&C 11.9 through 11.12 and 11.13.2 through 11.13.4	Should a Party that disputes a bill be required to pay the disputed amount into an interest-bearing escrow account pending resolution of the dispute?	11.9 On or before the Bill Due Date, the Non-Paying Party must pay: (i) all undisputed amounts to the Billing Party and (ii) all Disputed Amounts, except for Disputed Amounts arising from compensation for the termination of Section 251(b)(5) Traffic or ISP-Bound Traffic, into an interest bearing escrow account with a Third Party escrow agent that is mutually agreed upon by the Parties. 11.9.1 Identification of circumstances in which the Non-Paying Party shall not be required to pay a Disputed Amount into an escrow account: 11.9.1.1 The Non-Paying Party shall not be required to pay a Disputed Amount into an escrow account if its total Disputed Amounts not paid into escrow do not exceed $15,000. 11.9.1.2 The Non-Paying Party shall not be required to pay a Disputed Amount into an escrow account if it has established a minimum of 12 consecutive months of timely payment history and its total outstanding and unpaid invoice charges do not exceed 10 percent of the then-current monthly billing to said Non-Paying Party. 11.9.1.3 If the Billed Party believes in good faith that a billed amount is incorrect by reason of a clerical, or arithmetic error (e.g., erroneous use of a $0.50 rate when applicable rate for the service billed is $0.05, or multiplication by 1220 units when actual number of units was 220), the Billed Party may dispute the bill by bringing the asserted error to the Billing Party's attention without paying the Disputed Amount into an	11.9 On or before the Bill Due Date, the Non-Paying Party must pay: (i) all undisputed amounts to the Billing Party. 11.9.1 INTENTIONALLY LEFT BLANK 11.9.1.1 INTENTIONALLY LEFT BLANK 11.9.1.2 INTENTIONALLY LEFT BLANK 11.9.1.3 INTENTIONALLY LEFT BLANK	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		escrow account. Upon the assertion of such a dispute, 11.9.1.3.1 If the Billing Party agrees in all respects with the Billed Party's assertion of the error, the Billing Party will correct the error. 11.9.1.3.2 If the Billing Party agrees that a billing error has apparently occurred, but requires additional time for investigation or to ascertain the correct amount, the Billing Party will notify the Disputing Party in writing of the portion of its invoice, if any, that the Disputing Party is required to pay or escrow pending resolution of the dispute, with the amount of any required escrow to be reasonable under the circumstances. The Non-Paying Party shall pay into escrow as set forth in Section 11.10 below the amount reasonably specified by the Billing Party within five business days of its receipt of such specification, and if (but only if) the Non-Paying Party does so, the payment into escrow will be deemed to have been made, for purposes of perfection of the dispute, on the date on which the Billed Party initially disputed the bill under subsection 11.9.1.3. 11.9.1.3.3 If the Billing Party determines in good faith that no billing error has occurred, the Billing Party will so notify the Non-Paying Party, and may demand that the Non-Paying Party pay the Disputed Amount into escrow if it wishes to dispute the bill. Within five business days of its receipt of such a demand, the Disputing Party shall pay the Disputed Amount into an interest bearing escrow account as set forth in Section 11.10 below, and if (but only if) the Disputing Party does so, the payment into escrow will be deemed to have been made, for purposes of perfection of the Billing Dispute, as of the date on which the Billed Party initially disputed the bill under subsection 11.9.1.3 11.10 Requirements to Establish Escrow Accounts:	11.9.1.3.1 INTENTIONALLY LEFT BLANK 11.9.1.3.2 INTENTIONALLY LEFT BLANK 11.9.1.3.3 INTENTIONALLY LEFT BLANK 11.10 INTENTIONALLY LEFT BLANK.	

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		11.10.1 To be acceptable, the Third Party escrow agent must meet all of the following criteria:	11.10.1 INTENTIONALLY LEFT BLANK.	
		11.10.1.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;	11.10.1.1 INTENTIONALLY LEFT BLANK.	
		11.10.1.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and	11.10.1.2 INTENTIONALLY LEFT BLANK.	
		11.10.1.3 The financial institution proposed as the Third Party escrow agent must be authorized to handle ACH credit transfers.	11.10.1.3 INTENTIONALLY LEFT BLANK.	
		11.10.2 In addition to the foregoing requirements for the Third Party escrow agent, the Disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:	11.10.2 INTENTIONALLY LEFT BLANK.	
		11.10.2.1 The escrow account must be an interest bearing account;	11.10.2.1 INTENTIONALLY LEFT BLANK.	
		11.10.2.2 all charges associated with opening and maintaining the escrow account will be borne by the Disputing Party;	11.01.2.2 INTENTIALLY LEFT BLANK.	
		11.10.2.3 that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;	11.10.2.3 INTENTIALLY LEFT BLANK.	
		11.10.2.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal; and	11.10.2.4 INTENTIALLY LEFT BLANK.	
		11.10.2.5 disbursements from the escrow account will be limited to those:	11.10.2.5 INTENTIALLY LEFT BLANK.	

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		11.10.2.5.1 authorized in writing by both the Disputing Party and the Billing Party (that is, signature(s) from representative(s) of the Disputing Party only are not sufficient to properly authorize any disbursement); or 11.10.2.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 13.7 below; or 11.10.2.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 13.7 below. 11.11 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 11.3 above. 11.12 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 13.0 below. 11.13 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed: 11.13.1 the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute. 11.13.2 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party will be released to the Non-Paying Party, together with any interest accrued thereon;	11.10.2.5.1 INTENTIONALLY LEFT BLANK. 11.10.2.5.2 INTENTIALLY LEFT BLANK. 11.10.2.5.3 INTENTIALLY LEFT BLANK. 11.11 INTENTIONALLY LEFT BLANK. 11.12 INTENTIONALLY LEFT BLANK. 11.13 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed: 11.13.1 the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute. 11.13.2 INTENTIONALLY LEFT BLANK.	

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		11.13.3 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party will be released to the Billing Party, together with any interest accrued thereon; and 11.13.4 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 11.9 above.	11.13.3 INTENTIONALLY LEFT BLANK. 11.13.4 INTENTIONALLY LEFT BLANK.	
Issue 23b GT&C 12.4.3 and 12.4.4	Should a Party that disputes a bill be required to pay the disputed amount into an interest-bearing escrow account pending resolution of the dispute?	12.4 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than fifteen (15) calendar days following receipt of the Billing Party's notice of Unpaid Charges: 12.4.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total Disputed Amounts and the specific details listed in Section 13.4 below of this Agreement, together with the reasons for its dispute; and 12.4.2 pay all undisputed Unpaid Charges to the Billing Party; and 12.4.3 pay all Disputed Amounts (other than Disputed Amounts arising from Intercarrier Compensation) into an interest bearing escrow account that complies with the requirements set forth in Section 11.10 above; and 12.4.4 furnish written evidence to the Billing Party that the Non-Paying Party has	12.4 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than fifteen (15) calendar days following receipt of the Billing Party's notice of Unpaid Charges: 12.4.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total Disputed Amounts and the specific details listed in Section 13.4 below of this Agreement, together with the reasons for its dispute; and 12.4.2 pay all undisputed Unpaid Charges to the Billing Party. 12.4.3 INTENTIONALLY LEFT BLANK. 12.4.4 INTENTIONALLY LEFT BLANK.	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		established an interest bearing escrow account that complies with all of the terms set forth in Section 11.10 above and deposited a sum equal to the Disputed Amounts into that account (other than Disputed Amounts arising from Intercarrier Compensation). Until evidence that the full amount of the Disputed Charges (other than Disputed Amounts arising from Intercarrier Compensation) has been deposited into an escrow account that complies with Section 11.10 above is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 13.0 below.		
Issue 23c GT&C 12.6.2	Should a Party that disputes a bill be required to pay the disputed amount into an interest-bearing escrow account pending resolution of the dispute?	12.6 If the Non-Paying Party fails to: 12.6.1 pay any undisputed Unpaid Charges in response to the Billing Party's Discontinuance Notice as described in Section 12.2 above; 12.6.2 deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 11.10 above within the time specified in Section 12.2 above;	12.6 If the Non-Paying Party fails to: 12.6.1 pay any undisputed Unpaid Charges in response to the Billing Party's Discontinuance Notice as described in Section 12.2 above; 12.6.2 INTENTIONALLY LEFT BLANK.	AT&T Florida Proposed Language
Issue 24 GT&C 12.2	i) Should the ICA provide that the billing party may only send a discontinuance notice for unpaid undisputed charges? ii) Should the non-paying party have 15 or 30 calendar days from the date of a discontinuance notice to remit payment?	12.2 For purposes of this Section 12.2, to "pay" a bill means to pay all undisputed charges to the Billing Party and to pay all Disputed Amounts either to the Billing Party or into an escrow account in accordance with Sections 11.9 and 11.10. If the Billed Party fails to pay any portion of a bill, including but not limited to any Late Payment Charges, by the Bill Due Date, the Billing Party may send a written Notice ("Discontinuance Notice") informing such Non-Paying Party that in order to avoid disruption or disconnection of the Interconnection Services furnished under this Agreement, the Non-Paying Party must pay all	12.222 For purposes of this Section 12.2, to "pay" a bill means to pay all undisputed charges to the Billing Party. If the Billed Party fails to pay any portion of a bill, including but not limited to any Late Payment Charges, by the Bill Due Date, the Billing Party may send a written Notice ("Discontinuance Notice") informing such Non-Paying Party that in order to avoid disruption or disconnection of the Interconnection Services furnished under this Agreement, the Non-Paying Party must pay all undisputed unpaid amounts as provided above, within thirty (30) calendar days. The Non-Paying Party must pay the bill in full as described herein	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		unpaid amounts as provided above, within **fifteen** (15) calendar days. The Non-Paying Party must pay the bill in full as described herein within **fifteen** (15) calendar days of the Discontinuance Notice. If the Non-Paying Party does not pay as described herein within **fifteen** (15) calendar days of the Discontinuance Notice, the Billing Party may discontinue or disconnect Interconnection Services furnished under this Agreement.	within **thirty** (30) calendar days of the Discontinuance Notice. If the Non-Paying Party does not pay as described herein within **thirty** (30) calendar days of the Discontinuance Notice, the Billing Party may discontinue or disconnect Interconnection Services furnished under this Agreement.	
Issue 25 GT&C 11.13.1	Should the ICA obligate the billing party to provide itemized detail of each adjustment when crediting the billed party when a dispute is resolved in the billed party's favor?	11.13 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed: 11.13.1 the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute;	11.13 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed: 11.13.1 the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute. **The Billing Party shall identify each specific adjustment or credit with the dispute reference number provided by the Billed Party in its dispute of the charges being credited;**	CA Proposed Language with modification 11.13 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties will cooperate to ensure that all of the following actions are completed: 11.13.1 the Billing Party will credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after resolution of the dispute. The Billing Party shall identify each specific adjustment or credit with the dispute reference number provided by the Billed Party in its dispute of the charges being credited, unless otherwise agreed by the parties;
Issue 27 GT&C 13.4.3.8	Should the ICA permit CA to dispute a class of related charges on a single dispute notice?	13.4.3.8 INTENTIONALLY LEFT BLANK.	13.4.3.8 **The disputing party may dispute a class of related charges in a single dispute notice, as long as the dispute information provided relates to all disputes in the class as a whole.**	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 29 GT&C 13.9.1	ii) Should the ICA permit a party to bring a complaint directly to the Commission, bypassing the dispute resolution provisions of the ICA? iii) Should the ICA permit a party to seek relief from the Commission for an alleged violation of law or regulation governing a subject that is covered by the ICA?	13.9 Compliance with Dispute Resolution Process 13.9.1 The Parties agree that any actions and/or claims seeking to compel compliance with the Dispute Resolution process should be brought before the Commission in the state where the services in dispute are provided. However, each Party reserves any rights it may have to seek review of any ruling made by the Commission concerning this Agreement by a court of competent jurisdiction.	13.9 Compliance with Dispute Resolution Process 13.9.1 The Parties agree that any actions and/or claims seeking to compel compliance with the Dispute Resolution process should be brought before the Commission in the state where the services in dispute are provided. However, each Party reserves any rights it may have to seek review of any ruling made by the Commission concerning this Agreement by a court of competent jurisdiction. Nothing in this agreement shall be construed to prohibit a party from seeking relief from the Commission at any time for an alleged violation of this agreement or of any law or regulation by the other party, whether or not dispute resolution procedures have been followed.	AT&T Florida Proposed Language AT&T Florida Proposed Language
Issue 30 GT&C 17.1	i) Should the joint and several liability terms be reciprocal? ii) Can a third-party that places an order under this ICA using CA's company code or identifier be jointly and severally liable under the ICA?	17.1 In the event that CLEC consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party places orders under this Agreement using CLEC's company codes or identifiers, all such entities shall be jointly and severally liable for CLEC's obligations under this Agreement.	17.1 In the event that either party consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party place orders under this Agreement using CLEC's company codes or identifiers, the party shall be solely liable to the other for obligations under this Agreement related to the actions of its affiliate, agent or designate. This Agreement does not provide for action against or recovery from any third party, except as otherwise provided herein.	AT&T Florida Proposed Language AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 32 GT&C 37.1	Shall the purchasing Party be permitted to not pay taxes because of a failure by the providing Party to include taxes on an invoice or to state a tax separately on such invoice?	37.1 Except as otherwise provided in this Section, with respect to any purchase of products or services under this Agreement, if any Tax is required or permitted by Applicable Law to be billed to and/or collected from the purchasing Party by the providing Party, then: (i) the providing Party shall have the right to bill the purchasing Party for such Tax; (ii) the purchasing Party shall pay such Tax to the providing Party; and (iii) the providing Party shall pay or remit such Tax to the respective Governmental Authority. Whenever possible, Taxes shall be billed as a separate item on the invoice; provided, however, that failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate Governmental Authority prior to the time: (i) it bills the purchasing Party for such Tax, or (ii) it collects the Tax from the purchasing Party. If the providing Party fails to bill the purchasing Party for a Tax at the time of billing the products or services to which the Tax relates, then, as between the providing Party and the purchasing Party, the providing Party shall be liable for any penalties or interest thereon. However, if the purchasing Party fails to pay any Tax properly billed by the providing Party, then, as between the providing Party and the purchasing Party, the purchasing Party shall be solely responsible for payment of the Tax and any penalties or interest thereon. Subject to the provisions of this Section 35.0 governing contests of disputed Taxes, the purchasing Party shall be liable for and the providing Party may collect from the purchasing Party any Tax, including any interest or penalties for which the purchasing Party would be liable under this subsection, which is paid by Providing Party to the respective Governmental Authority within the applicable statute of limitations periods for assessment or collection of such Tax, including extensions; provided, however, that the providing Party notifies the purchasing Party within the earlier of (i) sixty (60) days following the running of such limitations period for including	37.1 Except as otherwise provided in this Section, with respect to any purchase of products or services under this Agreement, if any Tax is required or permitted by Applicable Law to be billed to and/or collected from the purchasing Party by the providing Party, then: (i) the providing Party shall have the right to bill the purchasing Party for such Tax; (ii) the purchasing Party shall pay such Tax to the providing Party; and (iii) the providing Party shall pay or remit such Tax to the respective Governmental Authority. Taxes shall be billed as a separate item on the invoice. Nothing shall prevent the providing Party from paying any Tax to the appropriate Governmental Authority prior to the time: (i) it bills the purchasing Party for such Tax, or (ii) it collects the Tax from the purchasing Party. If the providing Party fails to bill the purchasing Party for a Tax at the time of billing the products or services to which the Tax relates, then, as between the providing Party and the purchasing Party, the providing Party shall be liable for any penalties or interest thereon. However, if the purchasing Party fails to pay any Tax properly billed by the providing Party, then, as between the providing Party and the purchasing Party, the purchasing Party shall be solely responsible for payment of the Tax and any penalties or interest thereon. Subject to the provisions of this Section 35.0 governing contests of disputed Taxes, the purchasing Party shall be liable for and the providing Party may collect from the purchasing Party any Tax, including any interest or penalties for which the purchasing Party would be liable under this subsection, which is paid by Providing Party to the respective Governmental Authority within the applicable statute of limitations periods for assessment or collection of such Tax, including extensions; provided, however, that the providing Party notifies the purchasing Party within the earlier of (i) sixty (60) days following the running of such limitations period for including extensions, or (ii) six (6) years following the purchasing Party's payment for the products or services to which such Tax relates.	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		extensions, or (ii) six (6) years following the purchasing Party's payment for the products or services to which such Tax relates.		
Issue 33a GT&C 37.3-37.4	Should the purchasing Party be excused from paying a Tax to the providing Party that the purchasing Party would otherwise be obligated to pay if the purchasing Party pays the Tax directly to the Governmental Authority?	37.3 To the extent a purchase of products or services under this Agreement is claimed by the purchasing Party to be for resale or otherwise exempt from a Tax, the purchasing Party shall furnish to the providing Party an exemption certificate in the form reasonably prescribed by the providing Party and any other information or documentation required by Applicable Law or the respective Governmental Authority. Prior to receiving such exemption certificate and any such other required information or documentation, the Providing Party shall have the right to bill, and the Purchasing Party shall pay, Tax on any products or services furnished hereunder as if no exemption were available, subject to the right of the Purchasing Party to pursue a claim for credit or refund of any such Tax pursuant to the provisions of this Section 37.0 and the remedies available under Applicable Law. If it is the position of the purchasing Party that Applicable Law exempts or excludes a purchase of products or services under this Agreement from a Tax, or that the Tax otherwise does not apply to such a purchase, but Applicable Law does not also provide a specific procedure for claiming such exemption or exclusion or for the purchaser to contest the application of the Tax directly with the respective Governmental Authority prior to payment, then the providing Party may in its discretion agree not to bill and/or not to require payment of such Tax by the purchasing Party, provided that the purchasing Party (i) furnishes the providing Party with any exemption certificate requested by and in the form reasonably prescribed by the providing Party, (ii) furnishes the providing Party with a letter signed by an officer of the purchasing Party setting forth the basis of the purchasing Party's position under	37.3 To the extent a purchase of products or services under this Agreement is claimed by the purchasing Party to be for resale or otherwise exempt from a Tax, the purchasing Party shall furnish to the providing Party an exemption certificate in the form reasonably prescribed by the providing Party and any other information or documentation required by Applicable Law or the respective Governmental Authority. Purchasing Party shall have the right to claim and receive exemption from any governmental tax, fee or surcharge which it can reasonably prove that it remits directly to the proper government entity. If an official certificate of exemption does not exist for a specific tax or government surcharge, the parties agree that proof of payment of the tax or surcharge directly to the government entity shall constitute adequate proof of exemption. Prior to receiving such exemption certificate and any such other required information or documentation, the Providing Party shall have the right to bill, and the Purchasing Party shall pay, Tax on any products or services furnished hereunder as if no exemption were available, subject to the right of the Purchasing Party to pursue a claim for credit or refund of any such Tax pursuant to the provisions of this Section 37.0 and the remedies available under Applicable Law. If it is the position of the purchasing Party that Applicable Law exempts or excludes a purchase of products or services under this Agreement from a Tax, or that the Tax otherwise does not apply to such a purchase, but Applicable Law does not also provide a specific procedure for claiming such exemption or exclusion or for the purchaser to contest the application of the Tax directly with the respective Governmental Authority prior to	Companies should negotiate conforming language to the vote.

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		Applicable Law; and (iii) furnishes the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any Tax, interest, penalties, loss, cost or expenses (including attorney fees) that may be incurred by the providing Party in connection with any claim asserted or actions taken by the respective Governmental Authority to assess or collect such Tax from the providing Party. 37.4 To the extent permitted by and pursuant to Applicable Law, and subject to the provisions of this Section 37.0, the purchasing Party shall have the right to contest with the respective Governmental Authority, or if necessary under Applicable Law to have the providing Party contest (in either case at the purchasing Party's expense) any Tax that the purchasing Party asserts is not applicable, from which it claims an exemption or exclusion, or which it claims to have paid in error; provided, however, that (i) the purchasing Party shall ensure that no lien is attached to any asset of the providing Party as a result of any contest of a disputed Tax; (ii) with respect to any Tax that could be assessed against or collected from the providing Party by the respective Governmental Authority, the providing Party shall retain the right to determine the manner of contesting such disputed Tax, including but not limited to a decision that the disputed Tax will be contested by pursuing a claim for credit or refund; (iii) except to the extent that the providing Party has agreed pursuant to this Section 37.0 not to bill and/or not to require payment of such Tax by the purchasing Party	payment, then the providing Party **shall not** require payment of such Tax by the purchasing Party, provided that the purchasing Party (i) furnishes the providing Party with any exemption certificate requested by and in the form **reasonably** prescribed by the providing Party, (ii) furnishes the providing Party with a letter signed by an officer of the purchasing Party setting forth the basis of the purchasing Party's position under Applicable Law; and (iii) furnishes the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any Tax, interest, penalties, loss, cost or expenses (including attorney fees) that may be incurred by the providing Party in connection with any claim asserted or actions taken by the respective Governmental Authority to assess or collect such Tax from the providing Party. 37.4 To the extent permitted by and pursuant to Applicable Law, and subject to the provisions of this Section 37.0, the purchasing Party shall have the right to contest with the respective Governmental Authority, or if necessary under Applicable Law to have the providing Party contest (in either case at the purchasing Party's expense) any Tax that the purchasing Party asserts is not applicable, from which it claims an exemption or exclusion, or which it claims to have paid in error; provided, however, that (i) the purchasing Party shall ensure that no lien is attached to any asset of the providing Party as a result of any contest of a disputed Tax; (ii) with respect to any Tax that could be assessed against or collected from the providing Party by the respective Governmental Authority, the providing Party shall retain the right to determine the manner of contesting such disputed Tax, including but not limited to a decision that the disputed Tax will be contested by pursuing a claim for credit or refund; (iii) except to the extent that the providing Party has agreed pursuant to this Section 37.0 not to bill and/or not to require payment of such Tax by the purchasing Party pending the	

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		pending the outcome of such contest, the purchasing Party pays any such Tax previously billed by the providing Party and continues paying such Tax as billed by the providing Party pending the outcome of such contest. In the event that a disputed Tax is to be contested by pursuing a claim for credit or refund, if requested in writing by the purchasing Party, the providing Party shall facilitate such contest (i) by assigning to the purchasing Party its right to claim a credit or refund, if such an assignment is permitted under Applicable Law; or (ii) if an assignment is not permitted, by filing and pursuing the claim on behalf of the purchasing Party but at the purchasing Party's expense. Except as otherwise expressly provided in this Section 37.0, nothing in this Agreement shall be construed to impair, limit, restrict or otherwise affect the right of the providing Party to contest a Tax that could be assessed against or collected from it by the respective Governmental Authority. With respect to any contest of a disputed Tax resulting in a refund, credit or other recovery, as between the purchasing Party and the providing Party, the purchasing Party shall be entitled to the amount that it previously paid, plus any applicable interest allowed on the recovery that is attributable to such amount, and the providing Party shall be entitled to all other amounts.	outcome of such contest, the purchasing Party pays any such Tax previously billed by the providing Party and continues paying such Tax as billed by the providing Party pending the outcome of such contest. In the event that a disputed Tax is to be contested by pursuing a claim for credit or refund, if requested in writing by the purchasing Party, the providing Party shall facilitate such contest (i) by assigning to the purchasing Party its right to claim a credit or refund, if such an assignment is permitted under Applicable Law; or (ii) if an assignment is not permitted, by filing and pursuing the claim on behalf of the purchasing Party but at the purchasing Party's expense. Except as otherwise expressly provided in this Section 37.0, nothing in this Agreement shall be construed to impair, limit, restrict or otherwise affect the right of the providing Party to contest a Tax that could be assessed against or collected from it by the respective Governmental Authority. With respect to any contest of a disputed Tax resulting in a refund, credit or other recovery, as between the purchasing Party and the providing Party, the purchasing Party shall be entitled to the amount that it previously paid, plus any applicable interest allowed on the recovery that is attributable to such amount, and the providing Party shall be entitled to all other amounts. Taxes for which the Purchasing Party has provided evidence of direct payment to the Governmental Authority shall not be treated as contested under this provision and shall be entitled to exemption by the Providing Party.	
Issue 33b E911 5.2.2	If CA has both resale customers and facility-based customers, should CA be required to use AT&T Florida as a clearinghouse for 911 surcharges with	5.2.2 For Resellers, the ILEC shall serve as a clearinghouse between Resellers and PSAPs except where state law requires Reseller to collect and remit directly to the appropriate 911 Author Authority. The Parties agree that:	5.2.2 For Resellers, the ILEC shall serve as a clearinghouse between Resellers and PSAPs except where state law requires Reseller to collect and remit directly to the appropriate 911 Authority, or in the case of a Facility based CLEC which also has resale service from AT&T-21STATE, and which remits and reports its facility-based	CA Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
	respect to resale lines?	5.2.2.2 AT&T SOUTHEAST REGION 9-STATE will provide the 911 Customer a monthly settlement letter which provides the total number of access lines broken down into residence and business line totals only. If state statutes require a break out of Reseller information, the AT&T SOUTHEAST REGION 9-STATE shall include this information upon request by the 911 Customer.	and resale-based data in the aggregate to the 911 Customer. The Parties agree that: 5.2.2.2 AT&T SOUTHEAST REGION 9-STATE will provide the 911 Customer a monthly settlement letter which provides the total number of access lines broken down into residence and business line totals only. If state statutes require a break out of Reseller information, the AT&T SOUTHEAST REGION 9-STATE shall include this information upon request by the 911 Customer. In the case of a facility-based CLEC which also has resale service, and which remits and reports its facility-based and resale-based data in the aggregate to the 911 Customer, AT&T SOUTHEAST REGION 9-STATE shall omit CLEC's resale lines from its own reporting to 911 Customer. If CLEC claims exemption from resale 911 surcharges under this provision, CLEC shall be solely responsible for remitting and reporting of 911 surcharges to the 911 Customer.	
Issue 34 E911 3.3.2	Should CA be required to interconnect with AT&T Florida's E911 Selective Router?	3.3.2 AT&T-21STATE will provide facilities to interconnect the CLEC to the AT&T-21STATE's E911 SR, as specified in Attachment 02-Network Interconnection of this Agreement or per the requirements set forth via the applicable state tariff. Additionally, CLEC has the option to secure interconnection facilities from another provider or provide such interconnection using their own facilities. If diverse facilities are requested by CLEC, AT&T-21STATE will provide such diversity where technically feasible, at standard applicable tariff rates.	3.3.2 AT&T-21STATE will provide facilities to interconnect the CLEC to the AT&T-21STATE's E911SR, as specified in Attachment 02 -Network Interconnection of this Agreement or per the requirements set forth via the applicable state tariff. Additionally, CLEC has the option to secure interconnection facilities from another provider or provide such interconnection using their own facilities. If diverse facilities are requested by CA, AT&T-21STATE will provide such diversity where technically feasible, at standard applicable tariff rates. Notwithstanding its legal and/or regulatory requirement to provide E911 service to its End Users, nothing in this agreement shall prohibit CLEC from obtaining any Local Interconnection Service under this agreement, even if CLEC chooses to obtain E911	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
			interconnection from another provider/carrier.	
E911 4.1-4.3.4	Should CA be required to interconnect with AT&T Florida's E911 Selective Router?	4.1 Call Routing (for CLEC's own switches): 4.1.1 CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-21STATE E911 SR location. 4.1.2 CLEC will forward the ANI information of the party calling 911 to the AT&T-21STATE E911 SR. 4.2.3 CLEC shall order a minimum of two (2) one-way outgoing E911 Trunk(s) dedicated for originating 911 Emergency Service calls for each default PSAP or default ESN to interconnect from CLEC's switch to each appropriate AT&T-21STATE E911 SR, where applicable. Where Signaling System 7 (SS7) connectivity is available and required by the applicable E911 Customer, the Parties agree to implement Common Channel Signaling (CCS) trunking rather than Multi-Frequency (MF) trunking. 4.2.4 CLEC is responsible for ordering a separate E911 Trunk group from AT&T-21STATE for each county, default PSAP or other geographic area that the CLEC serves if the E911 Customer for such county or geographic area has a specified varying default routing condition. Where PSAPs do not have the technical capability to receive 10-digit ANI, E911 traffic must be transmitted over a separate trunk group specific to the underlying technology. CLEC will have administrative control for the purpose of issuing ASRs on this trunk group. Where the parties utilize SS7 signaling and the E911 network has the technology available,	4.1 Call Routing (for CLEC's own switches): 4.1.1 **Where it chooses to purchase E911 service from AT&T-21STATE**, CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-21STATE E911 SR location. 4.1.2 **Where it chooses to purchase E911 service from AT&T-21STATE**, CLEC will forward the ANI information of the party calling 911 to the AT&T-21STATE E911 SR 4.2.3 **Where it chooses to purchase E911 service from AT&T-21STATE**, CLEC shall order a minimum of two (2) one-way outgoing E911 Trunk(s) dedicated for originating 911 Emergency Service calls for each default PSAP or default ESN to interconnect from CLEC's switch to each appropriate AT&T-21STATE E911 SR, where applicable. Where Signaling System 7 (SS7) connectivity is available and required by the applicable E911 Customer, the Parties agree to implement Common Channel Signaling (CCS) trunking rather than Multi-Frequency (MF) trunking. 4.2.4 **Where it chooses to purchase E911 service from AT&T-21STATE**, CLEC is responsible for ordering a separate E911 Trunk group from AT&T-21STATE for each county, default PSAP or other geographic area that the CLEC serves if the E911 Customer for such county or geographic area has a specified varying default routing condition. Where PSAPs do not have the technical capability to receive 10-digit ANI, E911 traffic must be transmitted over a separate trunk group specific to the underlying technology. CLEC will have administrative control for the purpose of issuing ASRs on this trunk group. Where the	

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		only one (1) E911 Trunk group shall be established to handle multiple NPAs within the local Exchange Area or LATA. If the E911 network does not have the appropriate technology available, a SS7 trunk group shall be established per NPA in the local Exchange Area or LATA. In addition, 911 traffic originating in one (1) NPA must be transmitted over a separate 911 Trunk group from 911 traffic originating in any other NPA 911. 4.2.5 CLEC shall maintain facility transport capacity sufficient to route 911 traffic over trunks dedicated to 911 Interconnection between the CLEC switch and the AT&T-21STATE E911 SR. 4.2.6 CLEC shall order sufficient trunking to route CLEC's originating 911 calls to the designated AT&T-21STATE E911 SR. 4.2.10 CLEC shall monitor its 911 Trunks for the purpose of determining originating network traffic volumes. If CLEC's traffic study indicates that additional 911 Trunks are needed to meet the current level of 911 call volumes, CLEC shall provision additional 911 Trunks for Interconnection with AT&T-21STATE. 4.2.12 CLEC will not turn up live traffic until successful testing of E911 Trunks is completed by both Parties. 4.2.13 Where required, CLEC will comply with Commission directives regarding 911 facility and/or 911 Trunking requirements. 4.3 Database:	parties utilize SS7 signaling and the E911 network has the technology available, only one (1) E911 Trunk group shall be established to handle multiple NPAs within the local Exchange Area or LATA. If the E911 network does not have the appropriate technology available, a SS7 trunk group shall be established per NPA in the local Exchange Area or LATA. In addition, 911 traffic originating in one (1) NPA must be transmitted over a separate 911 Trunk group from 911 traffic originating in any other NPA911. 4.2.5 Where it chooses to purchase E911 service from AT&T-21STATE CLEC shall maintain facility transport capacity sufficient to route 911 traffic over trunks dedicated to 911 Interconnection between the CLEC switch and the AT&T-21STATE E911 SR. 4.2.6 Where it chooses to purchase E911 service from AT&T-21STATE CLEC shall order sufficient trunking to route CLEC's originating 911 calls to the designated AT&T-21STATE E911 SR. 4.2.10 CLEC shall monitor its 911 Trunks for the purpose of determining originating network traffic volumes. If CLEC's traffic study indicates that additional 911 Trunks are needed to meet the current level of 911 call volumes, CLEC shall provision additional 911 Trunks for Interconnection with AT&T-21STATE or an alternative E911 provider. 4.2.12 CLEC shall comply at all times with its regulatory obligation to provide working E911 service to its End Users, whether or not such service is purchased from AT&T-21STATE. 4.2.13 Where required, CLEC will comply with Commission directives regarding 911 facility and/or 911 Trunking requirements. 4.3 Database:	

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		4.3.1 Once the 911 Interconnection between CLEC and all appropriate AT&T-21STATE E911 SR(s) has been established and tested, CLEC or its representatives shall be responsible for providing CLEC's End User 911 Records to AT&T-21STATE for inclusion in AT&T-21STATE's DBMS on a timely basis. 4.3.2 CLEC or its agent shall provide initial and ongoing updates of CLEC's End User 911 Records that are Master Street Address Guide (MSAG) valid in electronic format based upon established NENA standards. 4.3.4 CLEC is responsible for providing AT&T-21STATE updates to the E911 database; in addition, CLEC is responsible for correcting any errors that may occur during the entry of their data to the AT&T-21STATE 911 DBMS.	4.3.1 Where it chooses to purchase E911 service from AT&T-21STATE, once the 911 Interconnection between CLEC and all appropriate AT&T-21STATE E911 SR(s) has been established and tested, CLEC or its representatives shall be responsible for providing CLEC's End User 911 Records to AT&T-21STATE for inclusion in AT&T-21STATE's DBMS on a timely basis. 4.3.2 Where it chooses to purchase E911 service from AT&T-21STATE, CLEC or its agent shall provide initial and ongoing updates of CLEC's End User 911 Records that are Master Street Address Guide (MSAG) valid in electronic format based upon established NENA standards. 4.3.4 Where it chooses to purchase E911 service from AT&T-21STATE, CLEC is responsible for providing AT&T-21STATE updates to the E911 database; in addition, CLEC is responsible for correcting any errors that may occur during the entry of their data to the AT&T-21STATE 911 DBMS.	
Issue 35 Net Int. 2.9	Should the definition of "Entrance Facilities" exclude interconnection arrangements where the POI is within an AT&T Florida serving wire center and CA provides its own transport on its side of that POI?	2.9 "Entrance Facilities" are the transmission facilities (typically wires or cables) that connect CLEC's network with AT&T-21STATE's network for the mutual exchange of traffic. These Entrance Facilities connect CLEC's network from CLEC's Switch or point of presence ("POP") within the LATA to the AT&T-21STATE Serving Wire Center of such Switch or POP for the transmission of telephone exchange service and/or exchange access service.	2.9 "Entrance Facilities" are the transmission facilities (typically wires or cables) that connect CLEC's network with AT&T-21STATE's network for the mutual exchange of traffic. These Entrance Facilities connect CLEC's network from CLEC's Switch or point of presence ("POP") within the LATA to the AT&T-21STATE Serving Wire Center of such Switch or POP for the transmission of telephone exchange service and/or exchange access service. Entrance Facilities do not apply to interconnection arrangements where the mutually-agreed Point of Interconnection ("POI") is within an AT&T-21STATE Serving Wire Center, and CLEC provides its own transport on its side of that POI.	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 36 Net Int. 3.2.4.6	Should the network interconnection architecture plan section of the ICA provide that CA may lease TELRIC-priced facilities to link one POI to another?	3.2.4.6 The additional POI(s) will be established within ninety (90) calendar days of notification that the threshold has been met.	3.2.4.6 The additional POI(s) will be established within ninety (90) calendar days of notification that the threshold has been met. CLEC may lease facilities from AT&T as Dedicated Transport-Interoffice Channel from an existing POI to the additional POI for this purpose.	AT&T Florida Proposed Language
Issue 37 Net Int. 3.2.6	Should CA be solely responsible for the facilities that carry CA's OS/DA, E911, Mass Calling, Third Party and Meet Point trunk groups?	3.2.6 CLEC is solely responsible, including financially, for the facilities that carry Operator Services/Directory Assistance ("OS/DA"), E911, Mass Calling, Third Party and Meet Point Trunk Groups.	3.2.6 CLEC is solely responsible, including financially, for the facilities that carry Operator Services/Directory Assistance ("OS/DA"), E911, Mass Calling, Third Party and Meet Point Trunk Groups on its side of the Point of Interconnection ("POI").	AT&T Florida Proposed Language
Issue 38 Net Int. 3.4.4	May CA designate its collocation as the POI?	3.4.4 The Parties recognize that a facility handoff point must be agreed upon to establish the demarcation point for maintenance and provisioning responsibilities for each Party on its side of the POI.	3.4.4 The Parties recognize that a facility handoff point must be agreed upon to establish the demarcation point for maintenance and provisioning responsibilities for each Party on its side of the POI. If the POI is a collocation arrangement within an AT&T Wire Center, then the demarcation point shall be that collocation.	CA Proposed Language
Issue 40 Net Int. 4.3.9	Should the ICA obligate CA to establish a dedicated trunk group to carry mass calling traffic?	4.3.9 High Volume Call In (HVCI)/Mass Calling (Choke) Trunk Group-AT&T-21STATE: 4.3.9.1 CLEC must establish a dedicated trunk group to the designated Public Response HVCI/Mass Calling Network Access Tandem in each Serving Area. This trunk group shall be one-way outgoing only and shall utilize MF signaling. As the HVCI/Mass Calling trunk group is designed to block all excessive attempts toward HVCI/Mass Calling NXXs, it is necessarily exempt from the one percent (1%)	4.3.9 INTENTIONALLY LEFT BLANK. 4.3.9.1 INTENTIONALLY LEFT BLANK.	CA Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		blocking standard described elsewhere in this Attachment. CLEC will have administrative control for the purpose of issuing ASRs on this one-way trunk group. The Parties will not exchange live traffic until successful testing is completed by both Parties. 4.3.9.2 The HVCI trunk group shall be sized as follows: [Table from attachment reflects number of mass calling trunks required based on the number of access lines] 4.3.9.3 If CLEC should acquire a HVCI/Mass Calling customer, (e.g., a radio station) CLEC shall notify AT&T-21STATE at least sixty (60) days in advance of the need to establish a one-way outgoing SS7 or MF trunk group from the AT&T-21STATE HVCI/Mass Calling Serving Office to the CLEC End User's serving office. CLEC will have administrative control for the purpose of issuing ASRs on this one-way trunk group. 4.3.9.4 If CLEC finds it necessary to issue a new choke telephone number to a new or existing HVCI/Mass Calling customer, CLEC may request a meeting to coordinate with AT&T-21STATE the assignment of the HVCI/Mass Calling telephone number from the existing choke NXX. In the event that the CLEC establishes a new choke NXX, CLEC must notify AT&T-21STATE a minimum of ninety (90) days prior to deployment of the new HVCI/Mass Calling NXX. AT&T-21STATE will perform the necessary translations in its End Offices and Tandem(s) and issue ASRs to establish a one-way outgoing SS7 or MF trunk group from the AT&T-21STATE Public Response HVCI/Mass Calling Network Access Tandem to CLEC's choke serving office.	4.3.9.2 INTENTIONALLY LEFT BLANK. 4.3.9.3 INTENTIONALLY LEFT BLANK. 4.3.9.4 INTENTIONALLY LEFT BLANK.	

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 41 Net Int. 4.3.11	Should the ICA include CA's language providing for SIP Voice-over-IP trunk groups?	4.3.11 INTENTIONALLY LEFT BLANK.	4.3.11 SIP Voice-over-IP/Voice-using-IP Trunk Groups. In the event that AT&T- 21STATE offers, installs, or provides any interconnection trunking using SIP Voice- over-IP or Voice-using-IP to any entity including its affiliates, CLEC shall be entitled to order the same type of interconnection trunking in the same areas and under the same terms where it has been offered, installed or provided for others under this agreement. The parties may mutually agree to complete a contract amendment to codify additional terms and conditions, but such an amendment shall not be required in order for CLEC to obtain the service under nondiscriminatory terms and pricing. The parties recognize that Voice-over-IP connects two network over the public internet, and is not the same as Voice-using IP which connects two networks using private non-internet peering. CLEC shall be entitled to select either of these options, to the extent technically feasible or provided to another party by AT&T-21STATE. In the case of Voice-using-IP, AT&T-21STATE shall provide non- discriminatory access for CLEC to interconnect its packet network to AT&T-21STATE's packet network at any technically feasible point chosen by CLEC for the purpose of interconnection only, utilizing technical means to ensure quality of service and security.	AT&T Florida Proposed Language
Issue 43 Net Int. 6.13.7	i) Is the billing party entitled to accrue late payment charges and interest on unpaid intercarrier compensation charges? ii) When a billing dispute is resolved in	6.13.7 For billing disputes arising from Intercarrier Compensation charges, the Party challenging the disputed amounts (the "Non-Paying Party") may withhold payment for the amounts in dispute (the "Disputed Amounts") from the Party rendering the bill (the "Billing Party") only for so long as the dispute remains pending pursuant to the dispute resolution procedures of the General Terms and Conditions. Late payment charges and interest will continue to accrue on the Disputed Amounts	6.13.7 For billing disputes arising from Intercarrier Compensation charges, the Party challenging the disputed amounts (the "Non-Paying Party") may withhold payment for the amounts in dispute (the "Disputed Amounts") from the Party rendering the bill (the "Billing Party") only for so long as the dispute remains pending pursuant to the dispute resolution procedures of the General Terms and Conditions. Late payment charges will continue to accrue on the Disputed Amounts while the dispute	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
	favor of the billing party, should the billed party be obligated to make payment within 10 business days or 30 business days?	while the dispute remains pending. The Non-Paying Party need not pay late payment charges **or interest** on the Disputed Amounts for so long as the dispute remains pending pursuant to the dispute resolution procedures of the General Terms and Conditions. Upon resolution of the dispute pertaining to the Disputed Amounts in accordance with the dispute resolution provisions of the General Terms and Conditions: (1) the Non-Paying Party will remit the appropriate Disputed Amounts to the Billing Party, together with all related **interest and** late payment charges, to the Billing Party within **ten** (10) business days of the resolution of the dispute, if (and to the extent) the dispute is resolved in favor of the Billing Party; and/or (2) the Billing Party will render all appropriate credits and adjustments to the Non-Paying Party for the Disputed Amounts, together with all appropriate **interest and** late payment charges, within **ten** (10) business days of the resolution of the dispute, if (and to the extent) the dispute is resolved in favor of the Non-Paying Party.	remains pending. The Non-Paying Party need not pay late payment charges on the Disputed Amounts for so long as the dispute remains pending pursuant to the dispute resolution procedures of the General Terms and Conditions. Upon resolution of the dispute pertaining to the Disputed Amounts in accordance with the dispute resolution provisions of the General Terms and Conditions: (1) the Non-Paying Party will remit the appropriate Disputed Amounts to the Billing Party, together with all related late payment charges, to the Billing Party within **thirty** (30) business days of the resolution of the dispute, if (and to the extent) the dispute is resolved in favor of the Billing Party; and/or (2) the Billing Party will render all appropriate credits and adjustments to the Non-Paying Party for the Disputed Amounts, together with all appropriate late payment charges, within **thirty** (30) business days of the resolution of the dispute, if (and to the extent) the dispute is resolved in favor of the Non-Paying Party.	
Issue 44 UNE 16.5	Should the ICA contain a definition for HDSL-capable loops?	16.6 INTENTIONALLY LEFT BLANK.	**16.6 The parties agree that an HDSL-capable loop is distinct from an HDSL loop. An HDSL loop is a conditioned loop, includes electronics at each end, and may use intermediate repeaters to reach extended distances. An HDSL-capable loop is simply a copper loop without electronics capable of carrying HDSL signals at distances of up to 11kft. This distinction is important because HDSL loops are subject to TRRO Wire Center Designation restrictions, while HDSL-capable loops are not. CLEC shall not be foreclosed from ordering HDSL-capable loops in Tier 1 Wire Centers, while the parties agree that CLEC is not entitled to HDSL loops in Tier 1 Wire Centers under current TRRO rules. CLEC shall not be required to use UCL instead of HDSL-capable loops in**	CA Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
			cases where HDSL-capable loops exist.	
Issue 45 LNP 3.1.4	How should the ICA describe what is meant by a vacant ported number?	3.1.4 When a ported telephone number becomes vacant (e.g., the telephone number is no longer **in service with the original** End User), the ported telephone number will be released back to the carrier owning the switch (after aging if any) in which the telephone number's NXX-X is native.	3.1.4 When a ported telephone number becomes vacant (e.g., the telephone number is no longer **assigned to an** End User), the ported telephone number will be released back to the carrier owning the switch (after aging if any) in which the telephone number's NXX-X is native.	Staff modified both parties' language 3.1.4 When a ported telephone number becomes vacant (e.g., the telephone number is disconnected), the ported telephone number will be released back to the carrier owning the switch (after aging if any) in which the telephone number's NXX-X is native.
Issue 46 LNP 3.2.1	i) Should the ICA include limitations on the geographic portability of telephone numbers? ii) RESOLVED	3.2.1 **Telephone numbers can be ported only within the Toll Message Rate Centers (TMRCs) as approved by the Commissions. "Porting within Rate Centers" refers to a limitation of changing service providers while the physical location of the End User remains with the wireline footprint of the Rate Center. If the End User changes his, her or its physical location from one Rate Center to another, the End User may not retain his, her or its telephone number (which is associated with the End User's previous Rate Center) as a basic network (non-FX) offering. An End User may retain his, her or its telephone number when moving from one Rate Center to another by the use of a tariff FX or Remote Call Forwarding offering from the new service provider. The Parties acknowledge that number portability is available so long as the number maintains the original rate center designation as approved by State Commissions.**	3.2.1 INTENTIONALLY LEFT BLANK.	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 48a OSS 6.4	Should the provisioning dispatch terms and related charges in the OSS Attachment apply equally to both parties?	6.3 In the event AT&T-21STATE must dispatch to the End User's location more than once for provisioning of ICA Services due to incorrect or incomplete information provided by CLEC (e.g., incomplete address, incorrect contact name/number, etc.), AT&T-21STATE will bill CLEC for each additional dispatch required to provision the circuit due to the incorrect/incomplete information provided. AT&T-21STATE will assess the Maintenance of Service Charge/Trouble Determination Charge/Trouble Location Charge/Time and Material Charges/Additional Labor Charges from the applicable Pricing Schedule, and/or applicable tariffs, price list or service guides. 6.4 INTENTIONALLY LEFT BLANK.	6.3 In the event AT&T-21STATE must dispatch to the End User's location more than once for provisioning of ICA Services due to incorrect or incomplete information provided by CLEC (e.g., incomplete address, incorrect contact name/number, etc.), AT&T-21STATE will bill CLEC for each additional dispatch required to provision the circuit due to the incorrect/incomplete information provided. AT&T-21STATE will assess the Maintenance of Service Charge/Trouble Determination Charge/Trouble Location Charge/Time and Material Charges/Additional Labor Charges from the applicable Pricing Schedule, and/or applicable tariffs, price list or service guides. 6.4 In the event CLEC must dispatch to the End User's location to resolve an issue solely caused by AT&T-21STATE's employees, contractors or agents (such as AT&T tampering with CLEC End User's service, AT&T falsely reporting that service has been properly installed when it has not, or AT&T falsely reporting that service has been repaired when it has not) CLEC will bill AT&T-21STATE and AT&T-21STATE shall pay for each dispatch required to resolve the problem caused by AT&T. The charge for each such dispatch shall not exceed the then-current AT&T-21STATE Trouble Determination Charge.	AT&T Florida Proposed Language
Issue 48b OSS 7.12	Should the repair terms and related charges in the OSS Attachment apply equally to both parties?	7.11 In the event AT&T-21STATE must dispatch to an End User's location more than once for repair or maintenance of ICA Services due to incorrect or incomplete information provided by CLEC (e.g., incomplete address, incorrect contact name/number, etc.), AT&T-21STATE will bill CLEC for each additional dispatch required to repair the circuit due to the incorrect/incomplete information provided. AT&T-21STATE will assess the Maintenance of Service Charge/Trouble	7.11 In the event AT&T-21STATE must dispatch to an End User's location more than once for repair or maintenance of ICA Services due to incorrect or incomplete information provided by CLEC (e.g., incomplete address, incorrect contact name/number, etc.), AT&T-21STATE will bill CLEC for each additional dispatch required to repair the circuit due to the incorrect/incomplete information provided. AT&T-21STATE will assess the Maintenance of Service Charge/Trouble	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		Determination Charge/Trouble Location Charge/Time and Material Charges/Additional Labor Charges at the rates set forth in the Pricing Schedule. 7.12 INTENTIONALLY LEFT BLANK.	Determination Charge/Trouble Location Charge/Time and Material Charges/Additional Labor Charges at the rates set forth in the Pricing Schedule. 7.12 In the event CLEC must dispatch to the End User's location to resolve an issue solely caused by AT&T-21STATE's employees, contractors or agents (such as AT&T tampering with CLEC End User's ICA Service, AT&T falsely reporting that ICA Service has been properly installed when it has not, or AT&T falsely reporting that ICA Service has been repaired when it has not) CLEC will bill AT&T-21STATE and AT&T-21STATE shall pay for each dispatch required to resolve the problem caused by AT&T. The charge for each such dispatch shall not exceed the then-current AT&T-21STATE Trouble Determination Charge.	
Issue 50 UNE 1.3	In order for CA to obtain from AT&T Florida an unbundled network element (UNE) or a combination of UNEs for which there is no price in the ICA, must CA first negotiate an amendment to the ICA to provide a price for that UNE or UNE combination?	1.3 The preceding includes without limitation that AT&T-21STATE shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving AT&T-21STATE network elements that do not constitute 251(c)(3) UNEs, or where 251(c)(3) UNEs are not requested for permissible purposes.	1.3 The preceding includes without limitation that AT&T-21STATE shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving AT&T-21STATE network elements that do not constitute 251(c)(3) UNEs, or where 251(c)(3) UNEs are not requested for permissible purposes. If CLEC orders any UNE or UNE combination for which a price does not exist in this agreement, but for which a price does exist in any then-current Commission-Approved AT&T-21STATE Interconnection Agreement, then CLEC shall be entitled to obtain that UNE or UNE combination on a non-discriminatory basis under the same rate and terms. The Parties shall execute an amendment within thirty (30) days of request from CLEC for such an amendment, and the UNE(s) shall be available to CLEC for ordering within five (5) days after execution of the amendment.	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 51 UNE 1.5	Should AT&T Florida be required to prove to CA's satisfaction and without charge that a requested UNE is not available?	1.5 Access to 251(c)(3) UNEs is provided under this Agreement over such routes, technologies, and facilities as AT&T-21STATE may elect at its own discretion. AT&T-21STATE will provide access to 251(c)(3) UNEs where technically feasible. Where facilities and equipment are not available, AT&T-21STATE shall not be required to provide 251(c)(3) UNEs.	1.5 Access to 251(c)(3) UNEs is provided under this Agreement over such routes, technologies, and facilities as AT&T-21STATE may elect at its own discretion. AT&T-21STATE will provide access to 251(c)(3) UNEs where technically feasible. Where facilities and equipment are not available, AT&T-21STATE shall not be required to provide 251(c)(3) UNEs. **CLEC shall be entitled to challenge such denials of UNE facilities and AT&T-212STATE shall reasonably prove at no charge to CLEC that the requested facilities do not exist or are all in use.**	Modified AT&T Florida Proposed Language 1.5 Access to 251(c)(3) UNEs is provided under this Agreement over such routes, technologies, and facilities as AT&T-21STATE may elect at its own discretion. AT&T-21STATE will provide access to 251(c)(3) UNEs where technically feasible. Where facilities and equipment are not available, AT&T-21STATE shall not be required to provide 251(c)(3) UNEs. In instances when AT&T-21State's automated Loop Make Up reports the availability of a UNE after AT&T-21STATE's automated Loop Make UP reports the unavailability of the same UNE, CA will be credited for the fee associated for the manual Loop Make Up report.
Issue 53 UNE 2.3	Should CA be allowed to comingle any UNE element with any non-UNE element it chooses?	2.3 "Commingling" or "Commingled Arrangement" means an arrangement connecting, attaching, or otherwise linking of a UNE, or a combination of UNEs, to one (1) or more facilities or services that CLEC has obtained at wholesale from AT&T-21STATE, or the combining of a UNE, or a combination of UNEs, with one (1) or more such facilities or services.	2.3 "Commingling" or "Commingled Arrangement" means an arrangement connecting, attaching, or otherwise linking of a UNE, or a combination of UNEs, to one (1) or more facilities or services that CLEC has obtained at wholesale from AT&T-21STATE, or the combining of a UNE, or a combination of UNEs, with one (1) or more such facilities or services. **CLEC shall be entitled to commingle any UNE with any other service element purchased from AT&T-21STATE either from this Agreement or from any AT&T-21STATE tariff, so long as the combination is technically feasible. Such commingling shall be required even if the specific arrangement sought by CLEC is not commonly commingled by AT&T-21STATE.**	Modified CA Proposed Language 2.3 "Commingling" or "Commingled Arrangement" means an arrangement connecting, attaching, or otherwise linking of a UNE, or a combination of UNEs, to one (1) or more facilities or services that CLEC has obtained at wholesale from AT&T-21STATE, or the combining of a UNE, or a combination of UNEs, with one (1) or more such facilities or services. CLEC shall be entitled to commingle any UNE with any other service element purchased at wholesale from AT&T-21STATE either from this Agreement or from any AT&T-21STATE tariff, so long as the combination is technically feasible. Such commingling shall be required even if the specific arrangement sought by CLEC is not commonly commingled by AT&T-21STATE.

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 54a UNE 6.2.6	Is thirty (30) days written notice sufficient notice prior to converting a UNE to the equivalent wholesale service when such conversion is appropriate?	6.2.6 If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular Conversion of a wholesale service, or group of wholesale services, to the equivalent 251(c)(3) UNE, or combination of 251(c)(3) UNEs, CLEC shall not request such Conversion or continue using such 251(c)(3) UNE or 251(c)(3) UNEs that result from such Conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility criteria applicable to a 251(c)(3) UNE or combination of 251(c)(3) UNEs, AT&T-21STATE may convert the 251(c)(3) UNE or 251(c)(3) UNE combination to the equivalent wholesale service or group of wholesale services, upon **thirty (30) days** written Notice to CLEC.	6.2.6 If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular Conversion of a wholesale service, or group of wholesale services, to the equivalent 251(c)(3) UNE, or combination of 251(c)(3) UNEs, CLEC shall not request such Conversion or continue using such 251(c)(3) UNE or 251(c)(3) UNEs that result from such Conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility criteria applicable to a 251(c)(3) UNE or combination of 251(c)(3) UNEs, AT&T- 21STATE may convert the 251(c)(3) UNE or 251(c)(3) UNE combination to the equivalent wholesale service or group of wholesale services, upon **one hundred eighty (180) days written Notice to CA.**	Modified AT&T Florida Proposed Language 6.2.6 Except in the case of a wire center reclassification, if CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular Conversion of a wholesale service, or group of wholesale services, to the equivalent 251(c)(3) UNE, or combination of 251(c)(3) UNEs, CLEC shall not request such Conversion or continue using such 251(c)(3) UNE or 251(c)(3) UNEs that result from such Conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility criteria applicable to a 251(c)(3) UNE or combination of 251(c)(3) UNEs, AT&T-21STATE may convert the 251(c)(3) UNE or 251(c)(3) UNE combination to the equivalent wholesale service or group of wholesale services, upon thirty (30) days written Notice to CLEC.
Issue 54b UNE 14.10.2.2, 14.10.2.3.1.1 and 14.10.2.3.1.2	Is thirty (30) calendar days subsequent to wire center Notice of Non-impairment sufficient notice prior to billing the provisioned element at the equivalent special access rate/Transitional Rate?	14.10.2.2 **For the affected UNE Loop/Transport element(s) installed after** March 11, 2005, CLEC will provide a true-up to an equivalent special access rate as of the later of the date billing began for the provisioned element or **thirty (30) calendar days** after AT&T-21STATE's Notice of non-impairment. If no equivalent special access rate exists, a true- up will be determined using the Transitional Rates. The applicable equivalent special access rate/Transitional Rates will continue to apply until the facility has been transitioned. 14.10.2.3.1 For affected UNE Loop/Transport elements ordered before AT&T-21STATE's Wire	14.10.2.2 CLEC will provide a true-up to an equivalent special access rate as of the later of the date billing began for the provisioned element or one hundred eighty (180) calendar days after AT&T-21STATE's Notice of non-impairment. If no equivalent special access rate exists, a true-up will be determined using the Transitional Rates. The applicable equivalent special access rate/Transitional Rates will continue to apply until the facility has been transitioned. 14.10.2.3.1 For affected UNE Loop/Transport elements ordered before AT&T-21STATE's Wire	Modified CA Proposed Language 14.10.2.2 CLEC will provide a true-up to an equivalent special access rate as of the later of the date billing began for the provisioned element or one hundred twenty (120) calendar days after AT&T-21STATE's Notice of non-impairment. If no equivalent special access rate exists, a true-up will be determined using the Transitional Rates. The applicable equivalent special access rate/Transitional Rates will continue to apply until the facility has been transitioned. 14.10.2.3.1 For affected UNE Loop/Transport elements ordered before

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		Center designation, 14.10.2.3.1.1 **if the applicable transition period is within the initial TRRO transition period described in Section 15.0 below of this Agreement, CLEC will provide a true- up during the period between the date that is thirty (30) calendar days after AT&T-21STATE's Notice of non-impairment and the date the circuit is transitioned to the Transitional Rates.** 14.10.2.3.1.2 **if the applicable transition period is after the initial TRRO transition period described in Section 14.1 above of this Agreement has expired**, CLEC will provide a true-up based on the Transitional Rates between the date that is **thirty** (30) calendar days after AT&T-21STATE's Notice of non-impairment and the end of the applicable transition period described in Section 15.1 below and the equivalent special access rates during the period between the end of the initial transition period and the date the circuit is actually transitioned. If no equivalent special access rate exists, a true-up will be determined using the Transitional Rates. The applicable equivalent special access/Transitional Rates as described above will continue to apply until the facility has been transitioned. 14.10.2.3.2 For affected UNE Loop/Transport elements ordered after AT&T-21STATE's Wire Center designation, CLEC will provide a true-up for the affected UNE Loop/Transport element(s) to an equivalent special access rate for the affected UNE Loop/Transport element(s) as of the later of the date billing began for the provisioned element or **thirty** (30) calendar days after AT&T-21STATE's Notice of non-impairment. If no equivalent special access rate exists, a true-up will be determined using the Transitional Rates. The applicable equivalent special access/Transitional Rates will continue to apply until the facility has been	Center designation, 14.10.2.3.1.1 INTENTIONALLY LEFT BLANK 14.10.2.3.1.2 CLEC will provide a true-up based on the Transitional Rates between the date that is **one hundred eighty** (180) calendar days after AT&T-21STATE's Notice of non-impairment and the end of the applicable transition period described in Section 15.1 below and the equivalent special access rates during the period between the end of the initial transition period and the date the circuit is actually transitioned. If no equivalent special access rate exists, a true-up will be determined using the Transitional Rates. The applicable equivalent special access/Transitional Rates as described above will continue to apply until the facility has been transitioned. 14.10.2.3.2 For affected UNE Loop/Transport elements ordered after AT&T-21STATE's Wire Center designation, **CLEC** will provide a true-up for the affected UNE Loop/Transport element(s) to an equivalent special access rate for the affected UNE Loop/Transport element(s) as of the later of the date billing began for the provisioned element or **one hundred eighty** (180) calendar days after AT&T-21STATE's Notice of non-impairment. If no equivalent special access rate exists, a true-up will be determined using the Transitional Rates. The applicable equivalent special access/Transitional Rates will continue to apply until the facility has	AT&T-21STATE's Wire Center designation, 14.10.2.3.1.1 INTENTIONALLY LEFT BLANK 14.10.2.3.1.2 CLEC will provide a true-up based on the Transitional Rates between the date that is one hundred <u>twenty</u> (120) calendar days after AT&T-21STATE's Notice of non-impairment and the end of the applicable transition period described in Section 15.1 below and the equivalent special access rates during the period between the end of the initial transition period and the date the circuit is actually transitioned. If no equivalent special access rate exists, a true-up will be determined using the Transitional Rates. The applicable equivalent special access/Transitional Rates as described above will continue to apply until the facility has been transitioned. 14.10.2.3.2 For affected UNE Loop/Transport elements ordered after AT&T-21STATE's Wire Center designation, CLEC will provide a true-up for the affected UNE Loop/Transport element(s) to an equivalent special access rate for the affected UNE Loop/Transport element(s) as of the later of the date billing began for the provisioned element or one hundred <u>twenty</u> (120) calendar days after AT&T-21STATE's Notice of non-impairment. If no equivalent special access rate exists, a true-up will be determined using the

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		transitioned.	been transitioned.	Transitional Rates. The applicable equivalent special access/Transitional Rates will continue to apply until the facility has been transitioned.
Issue 55 UNE 15.1	To designate a wire center as unimpaired, should AT&T Florida be required to provide written notice to CA?	15.1 The parties recognize that Wire Centers that AT&T-21STATE had not designated as meeting the FCC's non-impairment thresholds as of March 11, 2005, may meet those thresholds in the future. In the event that a Wire Center that is not currently designated as meeting one (1) or more of the FCC's non-impairment thresholds, meets one (1) or more of these thresholds at a later date, AT&T-21STATE may add the Wire Center to the list of designated Wire Centers and the Parties will use the following process, subject to state Commission jurisdiction: 15.1.1 AT&T-21STATE may update the Wire Center list as changes occur. 15.1.2 To designate a Wire Center that had previously not met one (1) or more of the FCC's impairment thresholds but subsequently does so, AT&T-21STATE will provide notification to CLEC **via Accessible Letter** and by a posting on AT&T CLEC Online website. 15.1.3 AT&T-21STATE will continue to accept CLEC orders for impacted DS1/DS3 UNE Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport without requiring CLEC self-certification for thirty (30) calendar days after the date **the Accessible Letter is issued.** 15.1.4 In the event the CLEC disagrees with AT&T-21STATE's determination, CLEC will have sixty (60) calendar days from the **issuance of the Accessible Letter** to dispute AT&T-21STATE's	15.1 The parties recognize that Wire Centers that AT&T-21STATE had not designated as meeting the FCC's non-impairment thresholds as of March 11, 2005, may meet those thresholds in the future. In the event that a Wire Center that is not currently designated as meeting one (1) or more of the FCC's non-impairment thresholds, meets one (1) or more of these thresholds at a later date, AT&T-21STATE may add the Wire Center to the list of designated Wire Centers and the Parties will use the following process, subject to state Commission jurisdiction: 15.1.1 AT&T-21STATE may update the Wire Center list as changes occur. 15.1.2 To designate a Wire Center that had previously not met one (1) or more of the FCC's impairment thresholds but subsequently does so, AT&T-21STATE will provide **written** notification to CLEC **under the notices provision of this agreement** and by a posting on AT&T CLEC Online website. 15.1.3 AT&T-21STATE will continue to accept CLEC orders for impacted DS1/DS3 UNE Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport without requiring CLEC self-certification for thirty (30) calendar days after the date **that the written notice was delivered to CA.** 15.1.4 In the event CLEC disagrees with AT&T-21STATE's determination, CLEC will have sixty (60) calendar days from the **date that the written notice was delivered** to dispute AT&T-21STATE's	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		Wire Center determination by providing a self-certification to AT&T-21STATE. 15.1.5 If the CLEC does not use the self-certification process described in Section 15.1.4 above to self-certify against AT&T-21STATE's Wire Center designation within sixty (60) calendar days of the issuance of the Accessible Letter, CLEC must transition all circuits that have been declassified by the Wire Center designation(s) by disconnecting or transitioning to an alternate facility or arrangement, if available, within thirty (30) calendar days ending on the ninetieth (90th) day after the issuance of the Accessible Letter providing the Wire Center designation of non-impairment; no additional notification from AT&T-21STATE will be required. CLEC may not obtain new DS1/DS3 UNE Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport in Wire Centers and/or Routes where such circuits have been declassified during the applicable transition period. If CLEC fails to disconnect or transition to an alternate facility or arrangement within such thirty (30) day period, AT&T-21STATE may disconnect such circuits or beginning billing CLEC the equivalent special access rate. If no equivalent special access rate exists, a true-up will be determined using the transitional rates set forth in Section 15.2 below. 15.1.6 If CLEC does provide self-certification to dispute AT&T-21STATE's designation determination within sixty (60) calendar days of the issuance of the Accessible Letter, AT&T-21STATE may dispute CLEC's self-certification as described in Section 14.8 above of this Agreement and AT&T-21STATE will accept and provision the applicable UNE Loop and Transport orders for the CLEC providing the self certification during a dispute resolution process.	Wire Center determination by providing a self-certification to AT&T-21STATE. 15.1.5 If the CLEC does not use the self-certification process described in Section 15.1.4 above to self-certify against AT&T-21STATE's Wire Center designation within sixty (60) calendar days of the issuance of the written notice, CLEC must transition all circuits that have been declassified by the Wire Center designation(s) by disconnecting or transitioning to an alternate facility or arrangement, if available, within one hundred eighty (180) calendar days after the date that the written notice was delivered providing the Wire Center designation of non-impairment; no additional notification from AT&T-21STATE will be required. CLEC may not obtain new DS1/DS3 UNE Loops, DS1/DS3 Dedicated Transport and/or Dark Fiber Dedicated Transport in Wire Centers and/or Routes where such circuits have been declassified during the applicable transition period. If CLEC fails to disconnect or transition to an alternate facility or arrangement within such one hundred eighty (180) day period, AT&T-21STATE may disconnect such circuits or beginning billing CLEC the equivalent special access rate. If no equivalent special access rate exists, a true- up will be determined using the transitional rates set forth in Section 15.2 below. 15.1.6 If CLEC does provide self-certification to dispute AT&T-21STATE's designation determination within sixty (60) calendar days of the issuance of the written notice, AT&T-21STATE may dispute CLEC's self-certification as described in Section 14.8 above of this Agreement and AT&T-21STATE will accept and provision the applicable UNE Loop and Transport orders for the CLEC providing the self certification during a dispute resolution process.	

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 56 UNE 4.6.4	Should the ICA include CA's proposed language broadly prohibiting AT&T Florida from taking certain measures with respect to elements of AT&T Florida's network?	4.6.4 INTENTIONALLY LEFT BLANK.	4.6.4 AT&T-21STATE shall not tamper with or convert an in-service UNE provided to CLEC for its own benefit or business purposes or for its own customers and/or substitute another UNE in its place.	Modified CA Proposed Language 4.6.4 AT&T-21STATE shall not tamper with or convert an in-service UNE provided to CLEC for its own benefit or business purposes or for its own customers.~~and/or substitute another UNE in its place~~
Issue 57 UNE 4.7.1	May CA use a UNE to provide service to itself or for other administrative purposes?	4.7.1 CLEC cannot use a UNE (whether on a stand-alone basis, in combination with other UNEs, or otherwise), with a network element possessed by CLEC (or otherwise) to provide service to itself, or for other administrative purpose(s).	4.7.1 INTENTIONALLY LEFT BLANK.	AT&T Florida Proposed Language
Issue 58 UNE 6.4.2	Is Multiplexing available as a stand-alone UNE independent of loops and transport?	6.4.2 AT&T-21STATE is not obligated, and shall not, provide access to (1) an unbundled DS1 UNE Loop in combination, or Commingled, with a DS1 UDT facility or service or a DS3 or higher UDT facility or service, or an unbundled DS3 UNE Loop in combination, or Commingled, with a DS3 or higher UDT facility or service, or (2) an unbundled DS1 UDT facility in combination, or Commingled, with an unbundled DS1 UNE Loop or a DS1 channel termination service, or to an unbundled DS3 UDT facility in combination, or Commingled, with an unbundled DS1 UNE Loop or a DS1 channel termination service, or to an unbundled DS3 UNE Loop or a DS3 or higher channel termination service (collectively, the "Included Arrangements"), unless CLEC certifies that all of the following conditions are met with respect to the arrangement being sought:	6.4.2 AT&T-21STATE is not obligated, and shall not, provide access to (1) an unbundled DS1 UNE Loop in combination, or Commingled, with a DS1 UDT facility or service or a DS3 or higher UDT facility or service, or an unbundled DS3 UNE Loop in combination, or Commingled, with a DS3 or higher UDT facility or service, or (2) an unbundled DS1 UDT facility in combination, or Commingled, with an unbundled DS1 UNE Loop or to an unbundled DS3 UNE Loop (collectively, the "Included Arrangements"), unless CLEC certifies that all of the following conditions are met with respect to the arrangement being sought::	Modified AT&T Florida Proposed Language 6.4.2 AT&T-21STATE is not obligated, and shall not, provide access to (1) an unbundled DS1 UNE Loop in combination, or Commingled, with a DS1 UDT facility or service or a DS3 ~~or higher~~ UDT facility or service, or an unbundled DS3 UNE Loop in combination, or Commingled, with a DS3 or higher UDT facility or service, or (2) an unbundled DS1 UDT facility in combination, or Commingled, with an unbundled DS1 UNE Loop or a DS1 channel termination service, or to an unbundled DS3 UDT facility in combination, or Commingled, with an unbundled DS1 UNE Loop or a DS1 channel termination service, or to an unbundled DS3 UNE Loop or a DS3 ~~or higher~~ channel

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
				termination service (collectively, the "Included Arrangements"), unless CLEC certifies that all of the following conditions are met with respect to the arrangement being sought:
UNE 9.6.1	Is Multiplexing available as a stand-alone UNE independent of loops and transport?	9.6. DS1 and DS3 UDT includes, as follows: 9.6.1 Multiplexing – an option ordered in conjunction with DS1 or DS3 UDT that converts a circuit from higher to lower bandwidth, or from digital to voice grade. Multiplexing is only available when ordered at the same time as DS1 or DS3 UDT and at the rates set forth in the Pricing Schedule.	9.6 DS1 and DS3 UDT includes, as follows: 9.6.1 INTENTIONALLY LEFT BLANK	CA Proposed Language
Issue 59a UNE 8.1.3.4.4	If AT&T Florida accepts and installs an order for a DS1 after CA has already obtained ten DS1s in the same building, must AT&T Florida provide written notice and allow 30 days before converting to and charging for Special Access service?	8.1.3.4.4 DS1 UNE Loop "Caps" – AT&T-21STATE is not obligated to provide to CLEC more than ten (10) DS1 Digital UNE Loops to any single Building in which DS1 Digital UNE Loops have not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS1 Digital UNE Loops once CLEC has already obtained ten DS1 Digital UNE Loops at the same Building. If, notwithstanding this Section, CLEC submits such an order, at AT&T-21STATE's option it may accept or reject the order, but convert any requested DS1 Digital UNE Loop(s) in excess of the Cap to Special Access; applicable Special Access charges will apply to CLEC for such DS1 Digital UNE Loop(s) as of the date of provisioning.	8.1.3.4.4 DS1 UNE Loop "Caps" – AT&T-21STATE is not obligated to provide to CLEC more than ten (10) DS1 Digital UNE Loops to any single Building in which DS1 Digital UNE Loops have not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS1 Digital UNE Loops once CLEC has already obtained ten DS1 Digital UNE Loops at the same Building. If, notwithstanding this Section, CLEC submits such an order, at AT&T-21STATE's option it may accept or reject the order. If AT&T-21STATE accepts an order and installs the service, then It must follow the conversion process in this provision prior to billing for the circuit as special access. Prior to conversion of a CLEC circuit to Special Access, AT&T-21STATE shall notify CLEC in writing and CLEC shall then have 30 days in which to transition or disconnect the circuit prior to conversion by AT&T-21STATE or to invoke the dispute resolution process in this agreement if it	CA Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
			believes that AT&T is not entitled to the conversion.	
Issue 59b UNE 8.1.3.5.4	Must AT&T provide notice to CA before converting DS3 Digital UNE loops to special access for DS3 Digital UNE loops that exceed the limit of one unbundled DS3 loop to any single building?	8.1.3.5.4 DS3 UNE Loop "Caps" – AT&T-21STATE is not obligated to provide to CLEC more than one (1) DS3 Digital UNE Loop per requesting carrier to any single Building in which DS3 Digital UNE Loops have not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS3 Digital UNE Loops once CLEC has already obtained one DS3 Digital UNE Loop at the same Building. If, notwithstanding this Section, CLEC submits such an order, at AT&T-21STATE's option it may accept or reject the order, but convert any requested DS3 Digital UNE Loop(s) in excess of the Cap to Special Access; applicable Special Access charges will apply to CLEC for such DS3 Digital UNE Loop(s) as of the date of provisioning.	8.1.3.5.4 DS3 UNE Loop "Caps" – AT&T-21STATE is not obligated to provide to CLEC more than one (1) DS3 Digital UNE Loop per requesting carrier to any single Building in which DS3 Digital UNE Loops have not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS3 Digital UNE Loops once CLEC has already obtained one DS3 Digital UNE Loop at the same Building. If, notwithstanding this Section, CLEC submits such an order, at AT&T-21STATE's option it may accept or reject the order. If AT&T-21STATE accepts an order and installs the service, then It must follow the conversion process in this provision prior to billing for the circuit as special access. Prior to conversion of a CLEC circuit to Special Access, AT&T-21STATE shall notify CLEC in writing and CLEC shall then have 30 days in which to transition or disconnect the circuit prior to conversion by AT&T-21STATE or to invoke the dispute resolution process in this agreement if it believes that AT&T is not entitled to the conversion.	CA Proposed Language
Issue 59c UNE 9.6.2 and 9.6.3	For unbundled DS1 or DS3 dedicated transport circuits that AT&T Florida installs that exceed the applicable cap on a specific route, must AT&T Florida provide written notice and allow 30 days prior to conversion to Special Access?	9.6.2 DS3 UDT Caps – AT&T-21STATE is not obligated to provide to CLEC more than twelve (12) DS3 UDT circuits on each Route on which DS3 Dedicated Transport has not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS3 Dedicated Transport once CLEC has already obtained twelve DS3 UDT circuits on the same Route. If, notwithstanding this Section, CLEC submits such an order, at AT&T-21STATE's option, it may accept or reject the order, but convert any requested DS3 UDT in excess of the	9.6.2 DS3 UDT Caps – AT&T-21STATE is not obligated to provide to CLEC more than twelve (12) DS3 UDT circuits on each Route on which DS3 Dedicated Transport has not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS3 Dedicated Transport once CLEC has already obtained twelve DS3 UDT circuits on the same Route. If, notwithstanding this Section, CLEC submits such an order, at AT&T-21STATE's option, it may accept or reject the order, but convert any requested DS3 UDT in excess of the Cap to	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
		Cap to Special Access; applicable Special Access charges will apply to CLEC for such DS3 Dedicated Transport circuits as of the date of provisioning.	Special Access; applicable Special Access charges will apply to CLEC for such DS3 Dedicated Transport circuits as of the date of provisioning. If AT&T-21STATE accepts an order and installs the service, then It must follow the conversion process in this provision prior to billing for the circuit as special access. Prior to conversion of a CLEC circuit to Special Access, AT&T-21STATE shall notify CLEC in writing and CLEC shall then have 30 days in which to transition or disconnect the circuit prior to conversion by AT&T-21STATE or to invoke the dispute resolution process in this agreement if it believes that AT&T is not entitled to the conversion.	
		9.6.3 DS1 UDT Caps-AT&T-21STATE is not obligated to provide to CLEC more than ten (10) DS1 251(c)(3) UDT circuits on each route on which DS1 Dedicated Transport has not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS1 Dedicated Transport once CLEC has already obtained ten DS1 251(c)(3) UDT circuits on the same route. If, notwithstanding this Section, CLEC submits such an order, at AT&T-21STATE's option it may accept the order, but convert any requested DS1 251(c)(3) UDT in excess of the Cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS1 Dedicated Transport circuits as of the date of provisioning.	9.6.3 DS1 UDT Caps-AT&T-21STATE is not obligated to provide to CLEC more than ten (10) DS1 251(c)(3) UDT circuits on each route on which DS1 Dedicated Transport has not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS1 Dedicated Transport once CLEC has already obtained ten DS1 251(c)(3) UDT circuits on the same route. If, notwithstanding this Section, CLEC submits such an order, at AT&T-21STATE's option it may accept the order, but convert any requested DS1 251(c)(3) UDT in excess of the Cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS1 Dedicated Transport circuits as of the date of provisioning. If AT&T-21STATE accepts an order and installs the service, then It must follow the conversion process in this provision prior to billing for the circuit as special access. Prior to conversion of a CLEC circuit to Special Access, AT&T-21STATE shall notify CLEC in writing and CLEC shall then have 30 days in which to transition or disconnect the circuit prior to conversion by AT&T-21STATE or to invoke the dispute resolution process in this agreement if it believes that AT&T is not entitled to the conversion.	

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 60 Resale 3.2	Should CLEC be prohibited from obtaining resale services for its own use or selling them to affiliates?	3.2 AT&T-22STATE has no obligation to make services available at the Resale Discount to CLEC for its own use or for the use of one or more of its parent, Affiliates, subsidiaries or similarly-related entities. CLEC shall not use any Resale Service to avoid the rates, terms and conditions of AT&T-22STATE's corresponding retail Tariff(s). Moreover, CLEC shall not use any Resale Service to provide access or interconnection services to itself, interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other Telecommunications providers; provided, however, that CLEC may permit its End Users to use resold local Exchange telephone service to access IXCs, wireless carriers, CAPs, or other retail Telecommunications providers.	3.2 CLEC shall not use any Resale Service to provide access or interconnection services to itself, interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other Telecommunications providers; provided, however, that CLEC may permit its End Users to use resold local exchange telephone service to access IXCs, wireless carriers, CAPs, or other retail telecommunications providers.	AT&T Florida Proposed Language
Issue 61 Resale 5.2.1	Which party's language regarding detailed billing should be included in the ICA?	5.2.1 Charges billed to CLEC for all services provided under this Attachment shall be paid by CLEC regardless of CLEC's ability or inability to collect from its End Users for such services. AT&T-21STATE shall provide CLEC with the option to obtain detailed monthly billing detail which, at a minimum, meets all regulatory requirements for detailed billing and which provides the telephone number and rate of each resold line billed for that month, along with any optional features for each line and the rate associated with each optional feature billed.	5.2.1 Charges billed to CLEC for all services provided under this Attachment shall be paid by CLEC regardless of CLEC's ability or inability to collect from its End Users for such services. Unless otherwise agreed by the parties, AT&T-21STATE shall provide monthly billing detail to CLEC at no cost to CLEC which, at a minimum, meets all regulatory requirements of FCC Order 99-72 for detailed billing. Detailed bills shall provide the telephone number and rate of each resold line billed for that month, along with any optional features for each line and the rate associated with each optional feature billed. Detailed bills shall also provide a description of any non- recurring charges and the cost of each, along with a detail of any usage-based charges. Each charge, including monthly recurring, nonrecurring and usage shall clearly identify which telephone number the charge applies to.	AT&T Florida Proposed Language

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Issue 62a CIS 1.2.2	Should the ICA state that OS/DA services are included with resale services?	1.2.2 CLEC shall be the retail OS/DA provider to its End Users, and AT&T-21STATE shall be the wholesale provider of OS/DA operations to CLEC. OS/DA Services are included on Resale Services purchased under this Agreement. AT&T-21STATE shall answer CLEC's End User OS/DA calls on CLEC's behalf, as follows:	1.2.2 CLEC shall be the retail OS/DA provider to its End Users, and AT&T-21STATE shall be the wholesale provider of OS/DA operations to CA, if CLEC chooses to order OS/DA from AT&T-22STATE. If ordered, AT&T-21STATE shall answer CLEC's End User OS/DA calls on CLEC's behalf, as follows:	AT&T Florida Proposed Language
Issue 62b: CIS 1.2.3.3	Does CA have the option of not ordering OS/DA service for its resale end users?	1.2.3 CLEC shall pay the applicable OS/DA rates found in the Pricing Sheet based upon CLEC's status as a Facilities-Based CLEC or a reseller. Provided however, CLEC may serve both as a reseller and as a facilities-based provider, and CLEC may convert its facilities-based End Users to Resale service, or vice versa, as described below in Section 3.6.8 below. 1.2.3.3 For facilities-based End Users, nothing herein shall obligate CLEC to provide OS/DA service,to its subscribers nor to order OS/DA services from AT&T-21STATE. CLEC shall have the absolute right to deny OS/DA service to its facilities-based End Users without penalty or charge from AT&T-21STATE.	1.2.3 CLEC shall pay the applicable OS/DA rates found in the Pricing Sheet based upon CLEC's status as a Facilities-Based CLEC or a reseller. Provided however, CLEC may serve both as a reseller and as a facilities-based provider, and CLEC may convert its facilities-based End Users to Resale service, or vice versa, as described below in Section 3.6.8 below. 1.2.3.3 Nothing herein shall obligate CLEC to provide OS/DA service, to its subscribers nor to order OS/DA services from AT&T-22STATE. CLEC shall have the absolute right to deny OS/DA service to any or all of its subscribers without penalty or charge from AT&T-21STATE.	AT&T Florida Proposed Language
Issue 64 CIS 6.1.5	What time interval should be required for submission of directory listing information for installation, disconnection, or change in service?	6.1.5 CLEC will provide accurate subscriber listing information of its subscribers to AT&T-21STATE via a mechanical or manual feed of the directory listing information to AT&T-21STATE's Directory Listing database. CLEC agrees to submit all listing information via a mechanized process within six (6) months of the Effective Date of this Agreement, or upon CLEC reaching a volume of two hundred (200) listing updates per day, whichever comes first. CLEC's subscriber listings will be interfiled (interspersed) in the directory among AT&T-21STATE's subscriber listing information. CLEC will submit listing information within one (1) Business Day of installation, disconnection or	6.1.5 CLEC will provide accurate subscriber listing information of its subscribers to AT&T- 21STATE via a mechanical or manual feed of the directory listing information to AT&T-21STATE's Directory Listing database. CLEC agrees to submit all listing information via a mechanized process within six (6) months of the Effective Date of this Agreement, or upon CLEC reaching a volume of two hundred (200) listing updates per day, whichever comes first. CLEC's subscriber listings will be interfiled (interspersed) in the directory among AT&T-21STATE's subscriber listing information. CLEC must submit all listing information intended for publication by the directory close (a/k/a last listing	AT&T Florida Proposed Language

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		other change in service (including change of non-listed or non-published status) affecting the DA database or the directory listing of a CLEC End User. CLEC must submit all listing information intended for publication by the directory close (a/k/a last listing activity) date.	activity) date.	
Issue 65 CIS 6.1.9.1	Should the ICA include CA's proposed language identifying specific circumstances under which AT&T Florida or its affiliates may or may not use CLEC's subscriber information for marketing or winback efforts?	6.1.9.1 AT&T-21STATE agrees to serve as the single point of contact for all independent and Third Party directory publishers who seek to include CLEC's subscriber (i.e., End User) listing information in an area directory, and to handle the CLEC's subscriber listing information in the same manner as AT&T-21STATE's subscriber listing information. In exchange for AT&T-21STATE serving as the single point of contact and handling all subscriber listing information equally, CLEC authorizes AT&T-21STATE to include and use the CLEC subscriber listing information provided to AT&T-21STATE's DA databases, and to provide CLEC subscriber listing information to directory publishers. Included in this authorization is release of CLEC listings to requesting competing carriers as required by Section 271(c)(2)(B)(vii)(II) and Section 251(b)(3) and any applicable state regulations and orders. Also included in this authorization is AT&T-21STATE's use of CLEC's subscriber listing information in AT&T-21STATE's DA, DA related products and services, and directory publishing products and services. AT&T Florida and its Affiliates agree that any subscriber listing information received from CLEC will be cared for in accordance with the provisions of Section 222 of the Act.	6.1.9.1 AT&T-21STATE agrees to serve as the single point of contact for all independent and Third Party directory publishers who seek to include CLEC's subscriber (i.e., End User) listing information in an area directory, and to handle the CLEC's subscriber listing information in the same manner as AT&T-21STATE's subscriber listing information. In exchange for AT&T-21STATE serving as the single point of contact and handling all subscriber listing information equally, CLEC authorizes AT&T-21STATE to include and use the CLEC subscriber listing information provided to AT&T-21STATE's DA databases, and to provide CLEC subscriber listing information to directory publishers. Included in this authorization is release of CLEC listings to requesting competing carriers as required by Section 271(c)(2)(B)(vii)(II) and Section 251(b)(3) and any applicable state regulations and orders. Also included in this authorization is AT&T-21STATE's use of CLEC's subscriber listing information in AT&T-21STATE's DA, DA related products and services, and directory publishing products and services. Neither AT&T-21STATE nor any of its affiliates shall use CLEC subscriber information for any marketing or "winback" efforts or campaigns, unless 1. the subscriber information is provided in the aggregate form along with all AT&T-21STATE subscriber information and 2. CLEC subscribers cannot be identified and separated from other subscribers from the information provided.	AT&T Florida Proposed Language

Issue Nos. and Section Reference(s)	Issue Statement(s)	AT&T Florida Proposed Language (As stated in its Brief)	CA Proposed Language	Staff Recommendation
Issue 66 Pricing Sheet	For each rate that CA has asked the Commission to arbitrate, what rate should be included in the ICA?	AT&T Florida notes see Pricing Sheet in ICA.	CA notes see Pricing Sheet in ICA	AT&T Florida Proposed Language