AT&T TENNESSEE

DIRECT TESTIMONY OF P.L. (SCOT) FERGUSON

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 10-00042 AND DOCKET NO. 10-00043

AUGUST 31, 2010

ISSUES

I.A(5), III.C, IV.A(1), IV.A(2), IV.B(1), IV.B(2), IV.B(3), IV.B(4), IV.B(5), IV.C(1), IV.C(2), IV.D(1), IV.D(2),IV.D(3), IV.E(1), IV.E(2), IV.H, V.C(1), V.C(2)

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is Scot Ferguson. I am an Associate Director in AT&T Operations' Wholesale organization. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from the University of Georgia in 1973, with a Bachelor of Journalism degree. My career spans more than 36 years with Southern Bell, BellSouth Corporation, BellSouth Telecommunications, Inc., and AT&T. In addition to my current assignment, I have held positions in sales and marketing, customer system design, product management, training, public relations, wholesale customer and regulatory support, and wholesale contract negotiations.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY PROCEEDINGS?

A. Yes. I have testified several times before the Tennessee Regulatory Authority ("Authority"), and I have also testified on several occasions each before the public utilities commissions of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina and South Carolina.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. I am testifying on behalf of AT&T Tennessee, which I will refer to as AT&T.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I explain and support AT&T's positions on the following issues in this docket: I.A(5), III.C, IV.A(1), IV.A(2), IV.B(1), IV.B(2), IV.B(3), IV.B(4), IV.B(5),

IV.C(1), IV.C(2), IV.D(1), IV.D(2), IV.D(3), IV.E(1), IV.E(2), IV.H, V.C(1), V.C(2).

This consolidated arbitration proceeding pertains to the development of both a CLEC (Competitive Local Exchange Carrier, or wireline) and a CMRS (Commercial Mobile Radio Service, or wireless) successor interconnection agreement ("ICA" or "Agreement") between AT&T and Sprint. Unless otherwise stated under applicable issues, the proposed language that I discuss in this testimony pertains to both ICAs.

II. DISCUSSION OF ISSUES

DPL ISSUE I.A(5)

Should the CLEC Agreement contain Sprint's proposed language that requires AT&T to bill a Sprint Affiliate or Network Manager directly that purchases services on behalf of Sprint?

Contract Reference: General Terms and Conditions, Part A, section 1.5

Q. WHAT IS THE DISAGREEMENT THAT IS THE SUBJECT OF THIS ISSUE?

A. Sprint proposes to include language in both the CMRS ICA and the CLEC ICA that would allow Sprint to use an Affiliate or third party network manager to construct and operate its systems and that would provide for AT&T to treat the Affiliate's or network manager's traffic as Sprint's. AT&T is not opposed to Sprint's proposal in principle, but has a legitimate concern about who those Affiliates or network managers might be – and their qualifications. Indeed, AT&T agreed to Sprint's proposed language for the CMRS ICA because Sprint CMRS already uses network managers who are known to and acceptable to

AT&T, and has identified those entities as the Sprint CMRS network managers for this ICA. AT&T objects to Sprint's language for the CLEC ICA, however, because Sprint has not identified who the Affiliates or network managers for Sprint's CLEC operations might be.

AT&T is opposed to language that gives Sprint the right to later employ such Affiliates and network managers as it sees fit – without affording AT&T the opportunity to investigate the qualifications of those companies.

Q. AS YOU UNDERSTAND IT, WHAT IS THE BASIS FOR SPRINT'S POSITION?

A. Sprint relies on the proposition that FCC regulations "do not restrict how Sprint CLEC may choose to provide services using third parties."[1] Further, Sprint cites AT&T's acceptance of Sprint's language for the CMRS ICA as justification for that same language appearing in the CLEC ICA.

Q. HOW DO YOU RESPOND TO SPRINT'S POSITION?

A. I have explained why AT&T's acceptance of Sprint's language for the CMRS ICA does not warrant imposition of the same language for the CLEC ICA. If anything, it supports AT&T's position by corroborating that the stated reason for AT&T's objection to including the language in the CLEC ICA is genuine. AT&T should not be forced to accept open-ended language that would give Sprint *carte blanche* to use any and all Affiliates and/or network managers, including those that might prove unacceptable to AT&T. As a reminder, this ICA will be available for adoption by other carriers, and AT&T would have the same concerns

[1] See Sprint's position statement on I.A(5) on the DPL.

with respect to those carriers. AT&T is willing to negotiate an appropriate amendment to the CLEC ICA when and if Sprint identifies – and allows AT&T to perform due-diligence investigation of – Affiliate or network manager candidates to perform functions similar to those under which the CMRS Parties operate. That should be acceptable to Sprint, and if it is not, the Authority should find it acceptable.

As for Sprint's observation that no FCC rule prohibits what Sprint has proposed, the Authority should find that distinctly unpersuasive. There is also no FCC rule that permits what Sprint has proposed – and there are many proposed ICA provisions that a state regulatory body might appropriately reject as unreasonable notwithstanding that the FCC has not addressed them.[2]

Q. HAS ANY OTHER COMMISSION RENDERED A DECISION THAT PROVIDES GUIDANCE ON THE RESOLUTION OF THIS ISSUE?

A. Yes. In a 2006 arbitration decision,[3] the Kentucky Public Service Commission addressed the question whether CMRS providers should be allowed to expand their networks through management contracts with affiliates and non-affiliated third parties, and ruled that the CMRS providers should *not* be allowed to do so

[2] Recall that under the 1996 Act, terms and conditions for interconnection are to be "just, reasonable and nondiscriminatory." 47 U.S.C. § 251(c)(2)

[3] In the Matter of: *Petition of Ballard Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, As Amended by the Telecommunications Act of 1996,* Case Nos. 2006-00215, *et al.* (December 22, 2006).

through non-affiliated third parties. That decision would support AT&T's position that Sprint's proposed language should be rejected altogether as it relates to non-affiliated third party network managers. Certainly, then, the more moderate position that AT&T has asserted here should be sustained.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. The Authority should reject Sprint's proposed language. AT&T will execute an appropriate amendment to the CLEC ICA (if warranted) to satisfy Sprint's desire to have Affiliate and Network Manager language in the CLEC ICA. However, that language should only be added after Sprint identifies – and AT&T can investigate – the entity(ies) that Sprint wishes to use as network manager(s), as AT&T has been able to do with respect to the CMRS ICA.

DPL ISSUE III.C

Should Sprint be required to pay AT&T for any reconfiguration or disconnection of interconnection arrangements that are necessary to conform to the requirements of this ICA?

Contract Reference: (AT&T) Att. 3, section 3.5, and Pricing Schedule, section 1.7.4 and 1.7.5; (Sprint) Att. 3, section 3.4, and Pricing Schedule, section 1.7.5

Q. WHAT IS THE DISAGREEMENT CONCERNING PAYMENT FOR RECONFIGURATION OR DISCONNECTION OF INTERCONNECTION ARRANGEMENTS?

A. AT&T proposes language in the ICAs that specifies Sprint will pay for the work AT&T performs on either Party's network interconnection arrangements to conform to the terms and conditions of the Parties' new ICAs. Sprint, on the other hand, wants language stating that neither Party will charge the other Party at any time for any costs associated with such a reconfiguration.

Q. WHAT DOES EACH OF THE PARTIES STAND TO GAIN IF SPRINT'S LANGUAGE IS ACCEPTED?

A. Sprint would gain a great advantage over AT&T because AT&T historically does the majority of any work covered by this provision. AT&T is entitled to be compensated for its work, as its language provides. Sprint's contention that each Party should bear its own costs may appear fair on the surface, but in reality is nothing more than a self-serving attempt to avoid paying AT&T for significant amounts of work that would be required in the event of a network reconfiguration. There is no benefit to AT&T under Sprint's proposed language.

Q. ARE THERE ANY OTHER CHARGES THAT SPRINT SHOULD BE REQUIRED TO PAY WITH RESPECT TO RECONFIGURATION WORK?

A. Yes. In section 1.7.4 of the ICA's Pricing Schedule, AT&T proposes that Sprint also should pay "the applicable service order processing/administration charge for each service order submitted by Sprint to AT&T-9STATE to process a request for installation, disconnection, rearrangement, change or record order." Sprint opposes that language, and, thus, maintains that it should not have to compensate AT&T for processing Sprint's orders. Sprint's position is baseless. If Sprint submits a service order to AT&T, Sprint is obliged to compensate AT&T for the costs AT&T incurs to process that order.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. The Authority should accept AT&T's proposed language and allow AT&T to be compensated for the work that it does for Sprint.

DPL ISSUE IV.A(1)

What general billing provisions should be in Attachment 7?

Contract Reference: Att. 7, sections 1.4 – 1.6.2

Q. WHAT IS THE SUBJECT OF THIS ISSUE?

A. This issue concerns three billing language disagreements, and all three disagreements arise out of language that AT&T proposes and Sprint opposes. I will address each of the disagreements separately.

Q. WHAT IS THE FIRST DISAGREEMENT?

A. AT&T proposes a section 1.6.5 – for the CMRS ICA only – that would provide:

> "Because AT&T-9STATE is unable to invoice reflecting an adjustment for shared Facilities and/or Trunks, Sprint will separately invoice AT&T-9STATE for AT&T-9STATE's share of the cost of such Facilities and/or Trunks as provided in this Agreement thirty (30) days following receipt by Sprint of AT&T-9STATE's invoice."

Sprint objects to that provision in its entirety.

Q. WHY DOES AT&T PROPOSE THAT LANGUAGE?

A. The "shared Facilities" to which section 1.6.5 refers are Facilities that connect Sprint CMRS offices (i.e., buildings that house switches) with AT&T offices. The Parties have disagreements about these Facilities (which other witnesses address), but they agree that each Party will pay for a share of the recurring costs of the Facilities based on that Party's proportionate use of the Facilities. Thus, for example, if AT&T is responsible for 40% of the traffic that is transmitted on a Facility and Sprint is responsible for 60%, AT&T will bear 40% of the cost and Sprint will bear the remaining 60%.

AT&T's proposed section 1.6.5 addresses the scenario in which AT&T provides the Facilities in the first instance, and Sprint must pay AT&T on a recurring (monthly) basis for its share of the Facilities usage. Assuming, for

example, that the monthly cost of a Facility is $100 and that Sprint is responsible for 60% of the usage, then Sprint would owe AT&T $60. Theoretically, the easiest way to accomplish that transaction would be for AT&T to send to Sprint a bill for $60. As it happens, however, and as section 1.6.5 recites, AT&T's billing system – which is programmed to charge $100 per month for this particular hypothetical Facility – is unable to apply a discount to that rate as it would have to do in order to produce a $60 bill to Sprint.

Consequently, in order to implement the Parties' agreement concerning shared Facility costs, AT&T will bill Sprint $100, and then Sprint needs to bill AT&T $40 for its usage of the Facility. In more general terms, AT&T will bill Sprint 100% of the recurring Facility charge each month, and Sprint must then bill AT&T for its share of the charge.

Q. WHY DOES SPRINT OPPOSE SECTION 1.6.5?

A. Sprint states in its position statement on the DPL that AT&T's proposed language "is contrary to the Parties' long-standing existing practice and would impose an undue burden on Sprint to remedy AT&T's internal billing deficiencies."

Q. HOW DO YOU RESPOND?

A. What Sprint refers to as a "long-standing existing practice" is a special accommodation that AT&T first made to Sprint – and Sprint alone – in 2001. It is true that AT&T, for Sprint's benefit, has been manually applying the Shared Facility Factor for Sprint. Therefore, in the hypothetical I used above, AT&T – as matters stand today – bills Sprint 100% of the Facility charge (because AT&T's billing system must do so) and then, at its own cost, manually determines the

credit that is due to Sprint ($40 in the hypothetical) and gives Sprint a credit in that amount. AT&T has no contractual obligation to do this, however, and no such obligation should be imposed here. AT&T should not be punished for accommodating Sprint in this regard for the last nine years.

Q. WHAT IS THE SECOND DISAGREEMENT THAT IS THE SUBJECT OF THIS ISSUE?

A. In both the CLEC and the CMRS ICAs, section 2.10.1.1 of Attachment 7 addresses back-billing and related matters. Section 2.10.1.1 includes agreed language to the effect that a Party may backbill charges that it discovers were unbilled or under-billed under certain circumstances. There is a disagreement about how far back back-billing may reach, and that disagreement is the subject of Issue IV.A(2), which I discuss below. Also, there are two other disagreements embedded in section 2.10.1.1. The first of these relates to language that AT&T proposes to include in section 2.10.1.1 that would allow a Party to claim credit for over-billed amounts on bills dated within the 12 months preceding the date on which the Billed Party notifies the Billing Party of the claimed credit amount. Sprint opposes inclusion of this language in the ICAs.

Q, WHAT IS THE RATIONALE FOR AT&T'S PROPOSED LANGUAGE?

A. Just as the Billing Party should be permitted to reach back and bill for products or services it provided but failed to bill for – as the Parties agree – so too the Billed Party should be permitted to reach back and claim a credit for products or services for which it inadvertently overpaid. At the same time, and again by analogy to back-billing, there should be a reasonable time limit on how far back the over-billed Party should be permitted to reach.

Q. ON WHAT BASIS DOES SPRINT OPPOSE AT&T'S PROPOSED LANGUAGE THAT WOULD ALLOW THE OVER-BILLED PARTY TO CLAIM A CREDIT?

A. I do not know Sprint's reasoning and I am surprised that this appears to be controversial from Sprint's viewpoint. Sprint offered no explanation on the DPL. It may be that Sprint wants to allow no credit claims, or it may be that Sprint does not want to put any time limit on credit claims. I am interested to see what Sprint says on this issue in its direct testimony, and I will respond as appropriate in my rebuttal testimony.

Q. WHAT IS THE THIRD DISAGREEMENT THAT IS THE SUBJECT OF THIS ISSUE?

A. This concerns more language in section 2.10.1.1. AT&T proposes, and Sprint opposes, the following language:

> Nothing herein shall prohibit either Party from rendering bills or collecting for any Interconnection products and/or services more than twelve (12) months after the Interconnection products and/or services were provided when the ability or right to charge or the proper charge for the Interconnection products and/or services was the subject of an arbitration or other Commission action, including any appeal of such action. In such cases, the time period for back-billing or credits shall be the longer of (a) the period specified by the commission in the final order allowing or approving such charge, (b) twelve (12) months from the date of the final order allowing or approving such charge, or (c) twelve (12) months from the date of approval of any executed amendment to this Agreement required to implement such charge.

Q. WHAT IS THE RATIONALE FOR THAT LANGUAGE?

A. It recognizes that back-billing and credit claim limitation can be affected by regulatory commission and court actions to the extent that orders from such bodies may supersede any such limitations provided by the ICAs.

Q. WHAT IS THE BASIS FOR SPRINT'S OPPOSITION?

A. Sprint provides no explanation in its position statement on the DPL, and I am surprised that Sprint does not agree with AT&T that regulatory commissions and courts can order the Parties to abide by terms of an order that supersedes terms and conditions of an ICA. I will respond to Sprint's explanation of its position in my rebuttal testimony, if Sprint provides one in its direct testimony.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. The Authority should adopt AT&T's proposed language for sections 1.6.5 and 2.10.1.1.

DPL ISSUE IV.A(2)

Should six months or twelve months be the permitted back-billing period?

Contract Reference: Att. 7, sections 2.10 – 2.10.1.2

Q. WHAT IS THE DISAGREEMENT ON THIS ISSUE?

A. As I mentioned in my discussion of the previous issue, section 2.10.1.1 of both ICAs includes agreed language that allows each Party to back-bill the other Party under certain circumstances. AT&T proposes that back-billing be limited to charges that were unbilled or under-billed during the 12 months preceding the date on which the Billing Party notifies the Billed Party in writing of the amount of the back-billing, while Sprint proposes a 6-month limit.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. AT&T's proposed 12-month limitation is a reasonable time period to allow the Billing Party to discover any non-billing or under-billing for which it should have

the right to pursue billing adjustments.[4] AT&T's proposal is consistent with a Georgia Public Service Commission decision in Docket No. 16583-U, Issue 62, dated January 14, 2004. The 12-month limitation is adequate and fair to both Parties, and is also consistent with AT&T's proposed 12-month limitation on billing disputes, which I address in Issue IV.C(1) below.

Q. PLEASE EXPLAIN YOUR POINT THAT AT&T'S PROPOSAL IS CONSISTENT WITH ITS POSITION ON ISSUE IV.C(1).

A. The dispute presented in Issue IV.C(1) concerns how long after the date on a bill the Billed Party should be permitted to dispute the bill. AT&T proposes 12 months, and Sprint proposes 24 months. My point here is simply that AT&T's position that 12 months is a reasonable period of time within which a Party may back-bill has the virtue of being consistent with AT&T's position on Issue IV.C(1) that the Billed Party should be allowed 12 months to dispute its bill. Both positions are predicated on the premise that 12 months is a reasonable period for detecting and raising a billing error. Sprint's position does not share this consistency.

Q. WHAT IS THE BASIS FOR SPRINT'S POSITION?

A. Sprint justifies its proposed 6-month limitation on the ground that it would "reduce disputes that would otherwise arise from "stale" billings more than six months after service is rendered."[5] Sprint adds that "the Billing Party has

---

[4] AT&T's proposed 12-month period would also apply to credit claims for over-billing, assuming that the AT&T's credit language that I addressed in connection with Issue IV.A(1) is included in the ICA.

[5] See Sprint's position statement on Issue IV.A(2) on the DPL.

complete control over when a bill is rendered," and, thus, six months is adequate to discover whatever billing problems exist.

Q. IS SPRINT'S JUSTIFICATION FOR ITS PROPOSAL PERSUASIVE?

A. I do not believe so. In the first place, Sprint's assertion that charges for services provided between six months in the past and twelve months in the past are "stale" rings hollow. I take it that what Sprint means by this is that with the passage of time, it becomes difficult to reconstruct records and to ascertain what amounts were actually unbilled or under-billed. While I certainly agree that there is some point in time beyond which it becomes difficult to sort out such matters, the proposition that six months is the breaking point seems unreasonable. That is particularly so when one considers that the data source for back-bills generally will not be human memory, but rather will be computer records. The Authority should not accept Sprint's suggestion that charges become "stale" after six months.

The fact is that six months is not enough time to discover all billing anomalies. AT&T is one of a number of large telecommunications companies (and I assume that Sprint is, as well) that renders millions of bills per month. Twelve months is a fair length of time for both Parties for this issue.

Q. IN YOUR DISCUSSION OF AT&T'S POSITION, YOU NOTED THAT AT&T'S ADVOCACY OF A 12-MONTH BACK-BILLING PERIOD IS CONSISTENT WITH AT&T'S ADVOCACY OF A 12-MONTH BILL DISPUTE PERIOD ON ISSUE IV.C(1). HOW DOES SPRINT'S ADVOCACY OF A SIX-MONTH BACK-BILLING PERIOD SQUARE WITH SPRINT'S POSITION ON ISSUE IV.C(1)?

A. It does not. On Issue IV.C(1), Sprint maintains that the Billed Party should be allowed 24 months to dispute a bill. That position implies that a dispute is not

"stale" merely because it concerns a two-year-old bill, and that it should be possible to perform the data recovery necessary to resolve the dispute. Sprint's advocacy of a six-month limitation on back-billing cannot be squared with its advocacy of a 24-month limitation on billing disputes.

Q. WHICH PARTY WOULD BENEFIT MOST IF SPRINT'S PROPOSED LANGUAGE ON BOTH ISSUES WAS ADOPTED?

A. I fully expect that AT&T will be billing Sprint much more than Sprint will be billing AT&T. That means that a longer period for the Billed Party to dispute bills would benefit Sprint, and a shorter period for the Billing Party to correct bills would also benefit Sprint. That may well explain why Sprint proposes a 24-month period for Billing Disputes and a 6-month period for bill corrections. A 12-month limitation on both actions as proposed by AT&T is a logical, workable and fair compromise for *both* Parties.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. The Authority should adopt AT&T's proposed 12-month back-billing period and reject Sprint's unreasonable 6-month limitation.

DPL ISSUE IV.B(1)

What should be the definition of "Past Due"?

Contract Reference: General Terms and Conditions, Part B – Definitions

Q. DO THE PARTIES AGREE THAT A DEFINITION OF "PAST DUE" SHOULD BE INCLUDED IN THE AGREEMENT?

A. Yes. The Parties agree that charges are "Past Due" when (a) the Billed Party fails to remit payment by the Bill Due Date, (b) a payment for any portion is received from the Billed Party after the Bill Due Date, or (c) a payment for any portion is

received in funds which are not immediately available to the Billing Party as of the Bill Due Date.

Q. WHAT, THEN, IS THE DISAGREEMENT?

A. The disputed definition looks like this, with the italicized words proposed by Sprint and opposed by AT&T:

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

Thus, AT&T says that *all* charges that are unpaid as of the Bill Due Date are Past Due. Sprint, on the other hand, contends that only charges that are *undisputed* as of the Bill Due Date should be considered as Past Due. That is the entire disagreement.

Q. WHAT IS THE BASIS FOR EACH PARTY'S POSITION?

A. It is important to understand what hinges on the definition of "Past Due." If you look at the billing provisions in Attachment 7 of the ICAs, you will see that the term "Past Due" appears just twice. The first occurrence is of no consequence here – the Past Due balance is merely included in a list of items to be shown on the Parties' invoices. *See* Att. 7, section 1.3.4. The other occurrence is in Att. 7, section 1.9, which provides, "A Late Payment Charge will be assessed for all Past Due payments . . . ." Thus, the Parties' disagreement about the definition of "Past Due" boils down to whether Disputed Amounts should be subject to Late

Payment Charges. AT&T maintains they should be, and Sprint evidently maintains they should not be.

Q. WHAT IS THE RATIONALE FOR AT&T'S POSITION?

A. As I discuss later, in connection with Issue IV.D(3), if one Party disputes the other Party's bill, the Disputing Party should deposit the Disputed Amount into an escrow account, to ensure funds will be available in the event the dispute is resolved in favor of the Billing Party.[6] Assuming that AT&T's escrow language is adopted, there can be no serious question but that Disputed Amounts should be subject to a Late Payment Charge. That is because under AT&T's escrow language (specifically, Att. 7, section 1.16.1), if the Disputing Party wins the dispute, not only are the escrowed funds returned to the Disputing Party, but also (under Att. 7, section 1.16.1), the Disputing Party receives a credit for the amount of the Late Payment Charge. This yields the right result: With AT&T's definition of "Past Due," the Disputed Amounts are subject to a Late Payment Charge under section 1.9, but if the dispute was valid, the Late Payment Charge is erased by means of a credit. On the other hand, if the Billing Party prevails on the dispute, the Late Payment Charge sticks. Again, that is the right result, because the disputed amount was in fact due and owing, and, thus, should be subject to a Late Payment Charge.

Q. IF, HOWEVER, ISSUE IV.D(3) IS RESOLVED IN FAVOR OF SPRINT, WHICH PARTY'S DEFINITION OF "PAST DUE" SHOULD BE INCLUDED IN THE ICAS?

---

[6] As I will discuss, AT&T would make an exception for reciprocal compensation bills.

A. AT&T's definition yields the right result with or without AT&T's escrow provisions. If a bill is disputed, the Disputed Amount ultimately may or may not be determined to have been owing. If it was properly owing, it should carry a Late Payment Charge. If not, the Late Payment Charge, though initially applied, should be – and would be – credited to the Billed Party.

DPL ISSUE IV.B(2)

What deposit language should be included in each ICA?

Contract Reference: Att. 7, section 1.8

Q. WHAT IS THE DISAGREEMENT BETWEEN THE PARTIES OVER DEPOSIT LANGUAGE?

A. While both Parties agree in principle that deposit language is appropriate for the ICAs, there are a number of disputed deposit provisions. For the most part, the differences can be distilled down to two areas: reciprocity and detail. As for reciprocity, AT&T maintains that only Sprint (and carriers that adopt Sprint's ICAs) should be subject to the possibility of having to make a deposit before obtaining services under the ICAs if Sprint (or the adopting carrier) has not demonstrated that it is creditworthy. Sprint, on the other hand, maintains that AT&T should be subject to a deposit requirement, as well. As for detail, AT&T proposes a considerable amount of deposit language that Sprint opposes and to which it offers no counterproposal. As I will explain, the level of detail proposed by AT&T is appropriate, and AT&T's proposed language is reasonable. There are also instances in which Sprint has proposed language in opposition to AT&T's, and, in those instances, I will explain why AT&T's proposal is superior.

Q. HOW IS YOUR TESTIMONY ON THIS ISSUE ORGANIZED?

A. First, I will briefly explain what the deposit requirement is, and why – as the Parties agree – some deposit language should be included in the ICAs. I will then discuss the question of reciprocity, and why AT&T should not be subject to a deposit requirement. Then, I will turn to the various topics addressed by the disputed deposit provisions – General Terms, determination of creditworthiness, the particulars of providing a deposit when one is required, and so forth.

Q. IN A NUTSHELL, WHAT IS THE DEPOSIT REQUIREMENT, AND WHY SHOULD THE ICAS INCLUDE DEPOSIT LANGAUGE?

A. When the Parties are operating under the ICAs, AT&T will be providing Sprint with products and services for which AT&T will be sending Sprint substantial invoices every month – and similarly for any carrier that adopts Sprint's ICAs. To the extent that a carrier to which AT&T is providing service may not be demonstrably creditworthy, AT&T has legitimate reason for insecurity that its bills will be paid. Just as any other provider of services on credit (i.e., where payment for the service is made after the service is provided) may do, AT&T reasonably asks that customers that have not demonstrated that they are creditworthy be required to place funds on deposit, so that AT&T will be reasonably assured of payment.

Q. DOES AT&T DEMAND A DEPOSIT FROM EVERY CLEC AND CMRS PROVIDER WITH WHICH IT HAS AN ICA?

A. No. AT&T does not demand a deposit from every carrier, because some carriers, by virtue of their payment history and their financial wherewithal, do not present a significant risk of non-payment of undisputed bills. AT&T's proposed deposit

language takes this into account, and provides for determinations of creditworthiness for that reason.

While AT&T does not look to every carrier with which it has an ICA for a deposit, AT&T does its best to ensure that its deposit language is included in every ICA so that it is in a position to demand a deposit when a deposit is warranted. I note in this regard that even if Sprint is not a credit risk, carriers that adopt Sprint's ICAs may be.

Q. TURNING TO THE DISAGREEMENT ABOUT RECIPROCITY, HOW DOES IT COME UP IN THE DISPUTED CONTRACT LANGUAGE?

A. It arises first in the very first sentence under Deposit Policy in section 1.8.1 of Attachment 7. AT&T's proposed section 1.8.1 begins, "**AT&T-9STATE** reserves the reasonable right to secure the accounts of new CLECs…and certain existing CLECs…for continuing creditworthiness with a suitable form of security pursuant to this Section." Sprint's proposed section 1.8.1, in contrast, begins, "If the Party that is billed for services under this Agreement (the "Billed Party") fails to meet the qualifications described in this Section for continuing creditworthiness, the other Party (the "Billing Party") reserves the right to reasonably secure the accounts of the Billed Party…with a suitable form of security pursuant to this Section." The reciprocity issue then persists throughout the remainder of each Party's deposit language; AT&T's language consistently treats only the CLEC or CMRS provider as subject to the deposit requirement, while Sprint's language consistently treats both Parties as subject to the deposit requirement.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION THAT IT SHOULD NOT BE SUBJECT TO THE DEPOSIT REQUIREMENT?

A. It is AT&T, as an ILEC, not Sprint that has lost tens of millions of dollars over the years due to non-payment of *undisputed* bills by carriers with impaired credit. It is to protect against such AT&T losses that the deposit language appears in the ICAs. I will be very surprised if Sprint can point to even a single instance, in the 14 years that AT&T (and BellSouth before it) has been a party to interconnection agreements under the 1996 Act, in which AT&T (or BellSouth) has failed to pay an undisputed bill. Simply put, AT&T needs the protection afforded by the deposit requirement – whether vis-à-vis Sprint in particular or carriers that may adopt Sprint's ICAs in general – while Sprint has no need for any such protection vis-à-vis AT&T. I note in this regard that it is quite likely that AT&T will be forced to do business with other carriers – carriers in precarious financial condition – that adopt these ICAs. Sprint, on the other hand, faces no such prospect.

Q. WHAT REASONS DOES SPRINT GIVE FOR ITS POSITION THAT THE DEPOSIT REQUIREMENT SHOULD BE RECIPROCAL?

A. In its position statement on the DPL, Sprint asserts only that its language "recognizes that the existence of mutual billing requires mutuality in the deposit provisions" and "provides legitimate restraint of a Billing Party to prevent the use of a deposit demand as a competitive weapon to needlessly encumber a Billed Party's capital."

Q. ARE THOSE VALID REASONS FOR MAKING THE DEPOSIT REQUIREMENT RECIPROCAL?

A. No. All Sprint's first assertion amounts to is an argument that just because each Party will be billing the other, each Party should enjoy the protection afforded by the right to demand a deposit. I have already explained why AT&T needs to be able to require a deposit from carriers that have not established that they are creditworthy, and why AT&T should not be subject to the deposit requirement.

Sprint's second assertion – that a reciprocal requirement would act as a restraint against the use of a deposit demand as a competitive weapon – is empty rhetoric. I can assure the Authority that AT&T's deposit language, and AT&T's demands for deposits when appropriate pursuant to that language, are driven by AT&T's well-founded concern, based on painful experience, that it needs these assurances of payment in order to avoid substantial losses due to non-payment of undisputed bills – not by a desire to encumber a competitor's capital. I will be very surprised if Sprint can produce any evidence to the contrary.

Q. WHAT IS YOUR CONCLUSION ABOUT RECIPROCITY?

A. Sprint – and, therefore, any carriers that adopt Sprint's ICAs – should be subject to the deposit requirement. AT&T should not. AT&T's position is consistent with this Authority's decision in Docket No. 03-00119 in which the Authority agreed that BellSouth and the CLEC were not similarly situated and that deposit requirements should not be reciprocal.[7] Further, the Georgia Public Service

[7] See *Final Order of Arbitration Award in re Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996,* Docket 03-00119, dated October 20, 2005, Decision on Issue 60(a), page 66.

Commission ruled the same as did this Authority in that Commission's similar BellSouth/DeltaCom arbitration proceeding.[8]

Q. DO YOU HAVE ANY PRELIMINARY COMMENTS BEFORE DISCUSSING THE VARIOUS OTHER DISAGREEMENTS EMBEDDED IN THE COMPETING DEPOSIT LANGUAGE PROPOSALS?

A. Yes. I would like to make one overarching point: Separate and apart from the particulars, AT&T's language is more robust and detailed than Sprint's, and that greater robustness and detail is, in this instance, a virtue. The relationship between two telecommunications companies that are parties to an interconnection agreement is complex, with significant financial considerations. Such financial considerations need to be addressed with strong, detailed contract language that mitigates the risks to the parties (as appropriate) and is clear. AT&T's proposed deposit language provides detail that is appropriate to the circumstances. Sprint's proposed language, on the other hand, is devoid of the detail required for a modern carrier-to-carrier relationship. I need only point out my testimony below on the definitions of Cash Deposit, Letter of Credit and Surety Bond to illustrate this shortcoming. While AT&T's proposed language is appropriately exacting in its detailed treatment of those instruments, Sprint would be satisfied if those words and their definitions did not even appear in the deposit language.

Q. MOVING BEYOND RECIPROCITY, WHAT IS THE NEXT SUBTOPIC OF DISAGREEMENT UNDER THE DEPOSIT POLICY?

---

[8] See Georgia Public Commission Order in re: *Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996,* Docket No. 16583-U, dated January 14, 2004, Decision on Issue 60(a), page 16.

A. The deposit provisions begin with "General Terms," which are covered in section 1.8.1, including, for AT&T, subparts of 1.8.1. AT&T's proposed language in section 1.8.1 "reserves the reasonable right to secure the accounts of new CLECs…and certain existing CLECs…with a suitable form of security pursuant to this Section." Further, AT&T's proposed language includes reservation of rights as to the treatment of new carriers, certain carriers having less than one year of continuous relationship with AT&T, and existing carriers that have filed for bankruptcy within the 12 months prior to the Effective Date for this ICAs.

Sprint's proposed reciprocal language says little more than that the Parties "reserve the right to reasonably secure the accounts of the Billed Party."

Q. WHAT IS WRONG WITH SPRINT'S PROPOSED LANGUAGE?

A. While Sprint's language conveys an important point (excluding the objectionable reciprocity aspect), it fails to address the special circumstances of new CLECs, carriers without a substantial relationship with AT&T and carriers that have filed for bankruptcy not long before the Effective Date of the ICA. None of these circumstances apply to Sprint, but it is nonetheless appropriate to address them, because they may well apply to carriers that adopt Sprint's ICAs. If anything, the fact that the circumstances do not apply to Sprint should make the language unobjectionable to Sprint.

Q. THE NEXT SUBTOPIC IS CREDITWORTHINESS. WHAT ARE PARTIES' COMPETING PROPOSALS?

A. I will address them section by section. First, though, I note that there are many instances in which Sprint's language is objectionable because it reflects Sprint's view that the deposit requirement should be reciprocal. AT&T strongly disagrees,

for reasons I have discussed. Having made that point, I will not repeat it every time it applies to the Sprint language I am discussing.

Section 1.8.2 addresses Initial Determination of Creditworthiness. AT&T's proposed language reasonably provides that AT&T may require a carrier to complete AT&T's Credit Profile to determine whether a security deposit is required, and, if so, in what amount. Significantly, AT&T's language acknowledges that no additional security deposit will be required from Sprint upon execution of these ICAs.

Section 1.8.3 deals with Subsequent Determination of Creditworthiness. AT&T's proposed language provides AT&T with the important right to review a carrier's creditworthiness in the event of a material change in the carrier's financial circumstances and/or if gross monthly billing has increased for services beyond the level most recently used to determine the level of security deposit. AT&T further proposes to provide 15 days notice of its intent to review the carrier's creditworthiness, and that the Parties agree to work together on the review. Upon completion of the review, including analysis of AT&T's Credit Profile regarding the carrier's financial condition, AT&T reserves the right to require the carrier to provide a suitable form of security deposit. These provisions are all reasonable, fair and clear.

Sprint's proposed language for section 1.8.3 requires that the amount of gross billing must increase by at least 25% over the most recent six months to warrant a subsequent credit review. Inexplicably, it appears to exempt carriers from further review if they have $5 billion or more in assets.

Q. IN ADDITION TO THE RECIPROCITY ISSUE, WHY DOES AT&T OBJECT TO SPRINT'S PROPOSED LANGUAGE?

A. Sprint's proposed language in section 1.8.2 inappropriately limits the security deposit amount to "one month's total net billing between the Parties in a given state." AT&T is opposed to basing deposit determinations on net billing, as it does not properly reflect AT&T's risk. AT&T pays its bills when they are due, so the proper measure of its risk is the amount of its bills to the other carrier – not the net difference. Moreover, a maximum security deposit of one month's billing, net or otherwise, is not enough. AT&T's proposal that deposit amounts be no more than two months of billings is more appropriate.

Sprint's section 1.8.3 requires that gross billing must increase by 25% over a six-month period before a subsequent credit determination can be made. This provision is too limiting. AT&T should be permitted to make the determination whether to undertake a subsequent credit determination on a case-by-case basis, so long as doing so is commercially reasonable. Section 1.8.3 also ties the ability to undertake a subsequent credit determination to the carrier's total amount of assets.

This makes no sense. Assets are only one side of the balance sheet equation; Sprint's proposal ignores liabilities. A carrier could have $6 billion in assets and $8 billion in liabilities and, despite being $2 billion in the hole, Sprint would exempt such a carrier from a subsequent credit determination. In addition, Sprint would count the assets of a carrier's holding company, even though AT&T's recourse in the event of default could be limited to the carrier only.

Finally, this provision would likely invite disputes about financial disclosures by, and asset valuations of, the carrier.

Q. THE NEXT SUBTOPIC PROPOSED BY AT&T (SECTION 1.8.4) PROVIDES DETAILS AS TO HOW A CARRIER MUST RESPOND TO AT&T'S REQUEST FOR A SECURITY DEPOSIT AND THE ASSOCIATED TIMEFRAMES. PLEASE DESCRIBE AT&T'S PROPOSAL.

A. AT&T's proposed language requires that: a) a new carrier shall provide the requested security deposit prior to service inauguration; b) a request for additional deposit (or a deposit if none was requested previously) should be provided within 15 days of AT&T's request if less than $5 million, or within 30 days if more than $5 million; c) if the deposit request amount is less than $5 million, the request from AT&T may be made by certified mail or overnight delivery, or, if over $5 million, by overnight delivery; and, 4) if the deposit request amount is less than $5 million, a carrier may request a written explanation of the factors used by AT&T to determine the amount of the security deposit, or, if the deposit request amount is over $5 million, such an explanation will be provided without the need for a separate request.

Assuming no dispute or agreed-to extension, if the carrier does not provide the requested deposit within the timeframes defined above, AT&T may discontinue service to the carrier in accordance with the provisions of the discontinuance process covered elsewhere in these ICAs. Although this Authority has not ruled previously on this issue, AT&T's position is consistent with the North Carolina Utilities Commission ruling on this issue in a prior arbitration

proceeding,[9] with the Commission noting at that time that AT&T's [BellSouth's] proposed language was consistent with provisions of that Commission's Rule 12-4 regarding deposits. Further, it is consistent with the Florida Public Service Commission's finding on the same issue.[10]

The carrier can fulfill the request for deposit by form of Cash Deposit, Surety Bond, Letter of Credit or any other for of security proposed by the carrier and acceptable to AT&T. If cash is selected by the carrier as the form of security deposit, interest shall accrue on the Cash Deposit in accordance with AT&T's tariffs or at 12% annum, whichever is less.

Finally, AT&T proposes that the amount of the security deposit will not exceed two (2) month's estimated billing for a new carrier, or two (2) month's actual billing under these ICAs for an existing carrier. Although this Authority has not ruled previously on this issue, AT&T's position is consistent with the North Carolina Utilities Commission's ruling on this issue in a prior arbitration proceeding,[11] with the Commission noting at that time that AT&T's [BellSouth's]

---

[9] See *Arbitration Order In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.,* Docket No.P- 772, Sub 8; Docket No. P-913, Sub 5; Docket No. P-989, Sub 3; Docket No. P-824, Sub 6; and Docket No. P-1202, Sub 4, dated February 8, 2006, Decision on Finding of Fact No. 21 (Issue No. 21 – Matrix Item No. 103).

[10] See *Joint Petition by New South Communications Corp., NuVox Communications, Inc., and Xspedius Communications, LLC, on behalf of its operations subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc.,* Order No. PSC-05-0975-FOF-TP in Docket No. 040130-TP, dated October 11, 2005; Decision on Issue No. XXII, pages 71-73.

[11] See *Arbitration Order In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.,* Docket No.P- 772, Sub 8; Docket No. P-913, Sub 5; Docket No. P-989, Sub 3; Docket

proposed language was also consistent with provisions of that Commission Rule 12-4 regarding deposits.

AT&T's proposals on these critical requirements are reasonable and fair, and will help ensure that the Parties have a clear understanding of the process for responding to AT&T's requests for security deposits.

Q. DID SPRINT PROPOSE ANY ALTERNATIVE LANGUAGE ON THESE TOPICS?

A. No. Other than the 15-day notice of review, Sprint does not propose any specific language on these topics. Instead, Sprint merely proposes that the Parties will "work together to determine the need for or amount of a … deposit." This is too vague and does not provide sufficient clarity.

Q. DOES SPRINT PROPOSE ANY OTHER LANGUAGE YOU WISH TO ADDRESS REGARDING SECTION 1.8.4?

A. Yes. Sprint proposes language regarding a dispute process with respect to security deposits in section 1.8.4. It is not necessary to include a discussion of dispute resolution in this section because the ICAs already have dispute resolution provisions elsewhere that are available for any dispute that may arise under these ICAs. Sprint's proposed language also provides that any decision by a commission regarding a dispute brought under section 1.8.4 will be binding on all states covered by these ICAs. AT&T does not agree to that for reasons that our attorneys will address in the briefs.

Q. WHAT IS THE DISPUTE WITH RESPECT TO SECTION 1.8.5?

No. P-824, Sub 6; and Docket No. P-1202, Sub 4, dated February 8, 2006, Decision on Finding of Fact No. 19 (Issue No. 19 – Matrix Item No. 101).

A. This section relates to the obligation to make complete and timely payments of bills, regardless of existence of a security deposit. Sprint inserted "agreed to or Commission-ordered" to describe the security deposit at issue in this section. That is unnecessary. If a security deposit is in place, it is in place because the Parties agreed or a commission ordered it. I am not certain about Sprint's motivation for this language, but absent a legitimate explanation and purpose, AT&T does not agree to the language.

Q. THE NEXT SUB-TOPIC PROVIDES THE CIRCUMSTANCES UNDER WHICH AT&T WILL NOT REQUIRE A SECURITY DEPOSIT FROM AN EXISTING CARRIER. WHY ARE THOSE DETAILS IMPORTANT?

A. Just as it is important to provide the circumstances under which AT&T may require a security deposit, it is important to provide in section 1.8.6 the circumstances under which AT&T will not require a security deposit.

Q. PLEASE PROVIDE AN OVERVIEW OF THE LANGUAGE AT&T PROPOSES FOR SECTION 1.8.6.

A. AT&T proposes that it will not require a security deposit from existing carriers that meet the following criteria: a) the carrier must have a good payment history based on the preceding 12-month period, with consideration for good-faith disputes as a percentage of receivable balance; b) the carrier's liquidity status is positive[12] for the prior four quarters of financials (at least one of which must be an audited financial report); c) the carrier's current bond rating (if applicable) is BBB or above; d) the carrier is free-cash-flow positive; e) the carrier has positive tangible net worth; f) the carrier has a debt-to-tangible net worth ratio between 0

[12] Based upon a review of Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA).

and 2.5; and, g) the carrier is compliant with all financial maintenance covenants. This proposal is fair and reasonable.

Q. DOES SPRINT PROPOSE ANY ALTERNATIVE LANGUAGE TO ANY OF THE LANGUAGE PROPOSED BY AT&T IN SECTION 1.8.6?

A. No.

Q. THE NEXT SUBTOPIC IS SECTION 1.8.7 REGARDING THE RETURN OF A SECURITY DEPOSIT. WHAT IS THE DISAGREEMENT IN THIS SECTION?

A. The only difference in language is based on reciprocity, which I have discussed.

Q. WHAT IS THE DISPUTE WITH RESPECT TO SECTION 1.8.8?

A. AT&T proposes that the return of a deposit to a carrier does not mean that a carrier can avoid a future request if it later demonstrates a poor payment history or fails to satisfy the conditions of AT&T's deposit policy. The language is straightforward and clear, and leaves no doubt that a security deposit is always an option that is dependent upon the carrier's payment and financial performance.

Q. DID SPRINT PROVIDE AN ALTERNATIVE LANGUAGE TO ANY OF THE LANGUAGE PROPOSED BY AT&T IN SECTIONS 1.8.7 AND 1.8.8?

A. No.

Q. THE FINAL SUBTOPIC UNDER THE DEPOSIT POLICY SECTION RELATES TO THE USE OF LETTERS OF CREDIT AND SURETY BONDS AS SECURITY DEPOSIT INSTRUMENTS. WHAT IS AT&T'S POSITION ON SECTION 1.8.9?

A. If the carrier chooses a Letter of Credit to satisfy AT&T's request for a security deposit or an additional security deposit, AT&T proposes that the carrier maintain the Letter of Credit until AT&T no longer requires it. The language also describes how AT&T may draw down on the Letter of Credit if the carrier

defaults on payment obligations and the carrier fails to renew a Letter of Credit or provide a suitable replacement for the Letter of Credit.

Similarly, if a carrier selects a Surety Bond to satisfy AT&T's request for a security deposit or an additional security deposit, AT&T's proposed language says that the carrier will provide a replacement for the Surety Bond if the bonding company's credit rating falls below "B". Further, if the carrier fails to provide a suitable replacement for the bond within 30 days, AT&T may take action on the Surety Bond and apply the proceeds to the carrier's account. This additional detailed language, as is all of AT&T's proposed deposit-related language, is important to ensure that AT&T is able to mitigate its risks, and to provide clarity of expectations to the carrier.

Q. DID SPRINT PROVIDE ANY ALTERNATIVE LANGUAGE TO ANY OF THE LANGUAGE PROPOSED BY AT&T IN SECTION 1.8.9?

A. No.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. The Authority should adopt AT&T's proposed deposit policy language. It is the same language, or nearly the same language, contained in at least seven (7) other ICAs approved by this Authority since mid-2009.[13] AT&T's proposed language provides appropriate protection to AT&T while treating fairly carriers wishing to purchase services from AT&T under these ICAs. Security deposits should not be mutual just because the Parties to these ICAs buy from each other. AT&T is not

[13] ICAs between AT&T and the following CLECs: BCN Telecom, Inc., Cincinnati Bell Any Distance, Inc., Entelegent Solutions, Inc., Midwestern Telecommunications, Inc., Peace Communications, L.L.C., Tele Circuit Network Corp., and Trans National Communications International, Inc.

now, nor has it been, a non-payment risk. Further, the Authority should remain mindful that whatever terms are ordered for these ICAs may be adopted by other carriers who may represent a greater risk of non-payment to AT&T than Sprint.

DPL ISSUE IV.B(3)

What should be the definition of "Cash Deposit"?

Contract Reference: General Terms and Conditions, Part B – Definitions

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE DEFINITION OF "CASH DEPOSIT"?

A. The AT&T deposit language that is the subject of the preceding Issue IV.B(2) identifies several ways in which a security deposit can be made, one of which is a Cash Deposit. *See* Att. 7, section 1.8.4. Accordingly, AT&T proposes to include a definition of "Cash Deposit" in the definitional portion of the General Terms and Conditions, namely: "Cash Deposit" means a cash security deposit in U.S. dollars held by **AT&T-9STATE**. Sprint, consistent with its opposition to the AT&T language that uses the term "Cash Deposit" proposes to include no definition of that term in the ICAs. In the alternative, Sprint contends that if the term is used, it should be defined in way that reflects that a deposit may be held not only by AT&T, but also by Sprint, which is consistent with Sprint's position on reciprocity of deposits that I discussed above.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. This issue presents no separate decision for the Authority to make. Assuming the Authority decides the ICAs should include AT&T's proposed deposit language, which it should for the reasons I discussed in connection with Issue IV.B(2), then the ICAs will have to include a definition of "Cash Deposit" because AT&T's

language uses that term. Also, if the Authority decides that AT&T should not be subject to a deposit requirement, which it should for the reasons I also discussed above, then it necessarily follows that AT&T's proposed definition of "Cash Deposit" should be adopted as-is.

DPL ISSUE IV.B(4)

What should be the definition of "Letter of Credit"?

Contract Reference: General Terms and Conditions, Part B – Definitions

Q. WHAT IS THE DISAGREEMENT ABOUT THE DEFINITION OF "LETTER OF CREDIT," AND HOW SHOULD IT BE RESOLVED?

A. The disagreement is the same as the disagreement concerning "Cash Deposit" (Issue IV.B(3)) that I just discussed. AT&T's proposed deposit language uses the term "Letter of Credit" (*see* Att. 7, section 1.8.4), so AT&T proposes a definition of the term. Sprint opposes AT&T's deposit language, would not use the term "Letter of Credit" in the ICAs, and so maintains that no definition of the term is necessary. Sprint proposes, in the alternative, that if AT&T's deposit language is adopted, the deposit requirement should apply to both Parties and the definition of "Letter of Credit" should be modified to reflect that. Again, the resolution of this issue will be driven by the Authority's resolution of Issue IV.B(2), and AT&T's proposed definition of "Letter of Credit" should be adopted for the reasons I discussed in connection with that issue.

DPL ISSUE IV.B(5)

What should be the definition of "Surety Bond"?

Contract Reference: General Terms and Conditions, Part B – Definitions

Q. WHAT IS THE DISAGREEMENT CONCERNING THE DEFINITION OF "SURETY BOND"?

A. As with the disagreements about "Cash Deposit" and "Letter of Credit," this issue is a function of AT&T's proposed deposit language, which includes the term "Surety Bond" (*see, e.g.*, Att. 7, section 1.8.4). AT&T therefore proposes a definition of "Surety Bond." Sprint does not dispute AT&T's definition. However, because it opposes AT&T's proposed deposit language that includes the term, Sprint maintains that the ICAs do not need a definition of "Surety Bond." Unlike the "Cash Deposit" and "Letter of Credit" issues, there is no dispute about reciprocity on this issue, because AT&T's proposed definition would not need to be modified if the Authority were to decide (which it should not) that the deposit requirement should be reciprocal.

DPL ISSUE IV.C(1)

Should the ICA require that billing disputes be asserted within one year of the date of the disputed bill?

Contract Reference: Att. 7, section 3.1.1

Q. WHAT IS THE DISAGREEMENT ON THIS ISSUE?

A. The Parties' disagree about the number of months after a bill that a Party may dispute the charges. AT&T proposes a 12-month limit, and Sprint proposes an overly liberal 24-month limit.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. AT&T's proposed 12-month time period is a practical and appropriate limitation. Through experience, AT&T knows that it is more difficult to corroborate dispute

claims beyond 12 months. Moreover, a 12-month limitation is consistent with AT&T's proposed 12-month limitation on back-billing that I discussed in Issue IV.A(2) above. The 24-month period Sprint proposes here is inconsistent with the 6-month limitation on back-billing Sprint proposes in Issue IV.A(2) above.

Q. HOW DO YOU RESPOND TO SPRINT'S STATEMENT THAT "THE PARTIES AGREE IN GTC PART A TO A 24-MONTH LIMIT AS TO ANY ICA DISPUTE"AND THAT "THERE IS NO LEGAL BASIS TO MANDATE A FURTHER TIME RESTRICTION FOR BILLING DISPUTES"?[14]

A. It is true that the Parties have agreed to language in the General Terms and Conditions Part A, section 17.3 setting a 24-month limit. However, Section 3.4.1 of GTC Part A under the 'Conflict in Provisions' provides: "If any definitions, terms or conditions in any given Attachment, Exhibit, Schedule of Addenda differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those contained in the main body of this Agreement, but only in regard to the services or activities listed in that particular Attachment, Exhibit, Schedule or Addenda." For the same reason that there are dispute resolution provisions specific to billing in Attachment 7 (separate and different from dispute resolution provisions in GTC Part A), there can also be dispute time period limitations specific to billing and found in Attachment 7. Thus, if the Authority agrees that a 12-month limitation for billing disputes is appropriate (and it should), it can order a time period limitation different from that in the General Terms and Conditions.

[14] See Sprint's position statement on Issue IV.C(1) on the DPL.

As far as there being no legal basis for a separate time limitation for Billing Disputes, I am not a lawyer and will offer no legal opinion. However, from a layman's perspective, I believe the question for the Authority is what a reasonable time period is, and a 12-month limitation is practical and workable for both Parties.

Q. YOU MENTIONED THAT SPRINT'S PROPOSED 24-MONTH BILLING DISPUTE LIMITATION IS INCONSISTENT WITH ITS POSITION ON ISSUE IV.A(2) ABOVE. PLEASE EXPLAIN.

A. In Issue IV.A(2) above, Sprint proposes to limit to just six months the period that a Billing Party could reach back to bill amounts that it inadvertently failed to include on earlier bills. Yet, for this issue, Sprint would allow the Billed Party 24 months to dispute a bill. Sprint observes in connection with Issue IV.A(2) that the Billing Party has control of the bill while the Billed Party does not, but that does not justify this disparity in treatment. Sprint cannot have it both ways. The period of time allotted to the Billing Party to correct a bill should be equal to the period of time allotted to the Billed Party to dispute the bill – and AT&T proposes 12 months on both issues.

Q. WHICH PARTY WOULD BENEFIT MOST IF SPRINT'S PROPOSED LANGUAGE ON BOTH ISSUES WAS ADOPTED?

A. As I stated in my discussion of Issue IV.A(2), Sprint would. AT&T will be billing Sprint considerably more than Sprint will be billing AT&T. Consequently a longer period for the Billed Party to dispute bills would benefit Sprint, as would a shorter period for the Billing Party to correct bills. The Authority should reject Sprint's unreasonable self-serving approach and adopt the reasonable and internally consistent 12-month limitation on both actions proposed by AT&T.

Q. HAS THIS AUTHORITY APPROVED ANY INTERCONNECTION AGREEMENTS THAT INCLUDE THE TWO 12-MONTH PERIODS PROPOSED BY AT&T?

A. Yes. Since the middle of 2009, this Authority has approved at least seven (7) such ICAs.[15]

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. The Authority should adopt AT&T's proposed language because it makes practical sense, is a workable solution for *both* Parties, and is consistent with the 12-month back-billing limitation proposed by AT&T. Further, it is consistent with language in ICAs approved previously by this Authority.

DPL ISSUE IV.C(2)

Which Party's proposed language concerning the form to be used for billing disputes should be included in the ICA?

Contract Reference: Att. 7, section 3.3.1

Q. WHAT IS THE DISAGREEMENT ABOUT BILLING DISPUTE FORMS?

A. AT&T proposes language that would require the Billed Party to submit Billing Disputes on the Billing Party's dispute form. Sprint proposes language that provides for the Billed Party to submit Billing Disputes on its own dispute form, or, in the alternative, to recover from the Billing Party any costs it incurs to modify its processes to use the Billing Party's form.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION ON THIS ISSUE?

A. Bills for services provided under an ICA are voluminous and complex, and Billing Disputes are frequent. AT&T receives many Billing Disputes from many carriers. In order for AT&T to efficiently process these disputes, it is essential

[15] See footnote 13 above.

that all carriers use the same form, namely AT&T's standard dispute form, which is compatible with AT&T's billing/collections systems. AT&T has worked successfully with other carriers in the past to ensure they are using AT&T's Billing Dispute form and providing the necessary data. AT&T has been unable to resolve this with Sprint, and AT&T should not be forced to treat Sprint differently from other carriers.

Moreover, AT&T's position recognizes that, as a general proposition, Billing Disputes should be submitted on the Billing Party's form. Thus, AT&T's language requires AT&T to submit disputes on Sprint's form, which presumably benefits Sprint.

Q. HAS THIS AUTHORITY APPROVED ICAS THAT INCLUDE THE BILLING DISPUTE FORM PROVISION PROPOSED HERE BY AT&T?

A. Yes. The Authority recently has approved at least seven (7) ICAs between AT&T and the CLECs.[16] Again, it is my understanding that AT&T has worked successfully with other carriers in the past to ensure they are using AT&T's Billing Dispute form.

Q. WHAT IS THE BASIS FOR SPRINT'S POSITION?

A. Sprint claims it should be permitted to maintain its current use of its own internal form to submit Billing Disputes to AT&T because, Sprint claims, it would be costly for Sprint to modify its internal processes to meet AT&T's needs. Sprint's practice, however, unfairly imposes costs on AT&T. AT&T must correct Sprint's billing information, populate the missing and incomplete data, look up accounts,

[16] See footnote 13 above.

and reformat the dispute forms. This delays the ultimate resolution of the Billing Dispute. Sprint's practice also unfairly benefits Sprint as compared to other wholesale customers. And, if Sprint is allowed to continue using its internal forms, other carriers may seek to follow along. The result would be to exponentially increase AT&T's burden of managing Billing Disputes. It also bears repeating that , if AT&T purchases services from Sprint and has a Billing Dispute relating to the services Sprint provides, AT&T is willing to use Sprint's billing forms. As the Party providing the service, AT&T should have the discretion to manage the Billing Dispute process in the most efficient way for all carriers.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. The Authority should accept AT&T's proposed language because to do otherwise would inappropriately require AT&T to provide Sprint preferential treatment. The Authority should not accept Sprint's alternative proposal that AT&T pay the costs for Sprint to modify Sprint's process to be compatible with AT&T's systems. AT&T is willing to absorb any costs it might incur to submit Billing Disputes to Sprint on Sprint's form, and Sprint should do the same.

DPL ISSUE IV.D(1)

What should be the definition of "Non-Paying Party"?

Contract Reference: General Terms and Conditions, Part B – Definitions

Q. DO THE PARTIES AGREE THAT A DEFINITION OF "NON-PAYING PARTY" SHOULD BE INCLUDED IN THE ICAS?

A. Yes.

Q. WHAT, THEN, IS THE DISAGREEMENT?

A. AT&T contends that a Non-Paying Party is one that has not paid the total of *any* charges (undisputed and/or disputed) by the Bill Due Date. Sprint, on the other hand, contends that a Non-Paying Party is one that has not paid *only* the undisputed charges by the Bill Due Date.

Q. WHICH PARTY'S DEFINITION SHOULD BE INCLUDED IN THE ICAS?

A. AT&T's language is reasonable and, most importantly, it works in the context of the language that will be included in the ICAs – including language on which the Parties have agreed. Sprint's approach, in contrast, would render meaningless contract language on which the Parties have agreed.

Q. CAN YOU PROVIDE AN EXAMPLE OF HOW AT&T'S DEFINITION OF "NON-PAYING PARTY" WORKS WITH AGREED LANGUAGE IN THE ICAS?

A. Yes. Agreed language in Attachment 7, section 1.12 states: "If any unpaid portion of an amount due to the Billing Party under this Agreement is 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 3.3 below." Non-Paying Party, as used in agreed section 1.12, obviously means a Party that has not paid Disputed Amounts.

Q, IF SPRINT'S PROPOSED DEFINITION OF "NON-PAYING PARTY" WERE INCLUDED IN THE ICAS, WHAT EFFECT WOULD THAT HAVE ON SECTION 1.12?

A. It would effectively eliminate it from the ICAs. The point of section 1.12 is that if a Party disputes a bill, that Party – which the ICAs denominate the "Non-Paying Party" – must do certain things. Sprint wants "Non-Paying Party" to mean a

Party that does not pay *only* undisputed charges. If Sprint's view were adopted, then a Party disputing its bill would not be a Non-Paying Party and, therefore, would not have to do the things set forth in section 1.12. That, in turn, would mean that section 1.12 would never apply.

Q. CAN YOU PROVIDE ANOTHER EXAMPLE?

A. Yes. Agreed language in section 2.4 of Attachment 7 provides:

> 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 [disputed number] calendar days following receipt of the Billing Party's notice of Unpaid Charges:
>
> 2.4.1 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 the Dispute Resolution Section of this Attachment 7, together with the reasons for its dispute; and
>
> 2.4.2 pay all undisputed Unpaid Charges to the Billing Party**;** **[**disputed language follows].

The term "Non-Paying Party," as used in that agreed language, means a Party that has not paid all billed amounts – including amounts that the Non-Paying Party disputes.

Q. IS THERE ALSO DISPUTED LANGUAGE IN WHICH THE TERM "NON-PAYING PARTY" IS USED?

A. Yes. AT&T's proposes escrow language, which Sprint opposes in its entirety and which I discuss below under Issue IV.D(3), uses the term "Non-Paying Party" several times, because under AT&T's proposed language, the Non-Paying Party that disputes a bill is required to put the Disputed Amount in escrow. If AT&T's proposed escrow language is included in the ICAs, as it should be, the term "Non-Paying Party" will be used many times in the ICAs, in addition to the two

instances I discussed above, in a context where the term must encompass the Billed Party that disputes a bill. However, AT&T's proposed definition of "Non-Paying Party" should be adopted for reasons separate and apart from the escrow provisions. As I have demonstrated, even agreed language in the ICAs simply does not work if this issue is not resolved in favor of AT&T.

DPL ISSUE IV.D(2)

What should be the definition of "Unpaid Charges"?

Contract Reference: General Terms and Conditions, Part B – Definitions

Q. DO THE PARTIES AGREE THAT A DEFINITION OF "UNPAID CHARGES" SHOULD BE INCLUDED IN THE ICAS?

A. Yes.

Q. WHAT IS THE DISAGREEMENT?

A. It is the same fundamental disagreement that I discussed in the previous issue regarding the definition of Non-Paying Party. AT&T contends that Unpaid Charges means *any* charges (undisputed and/or disputed) billed to the Non-Paying Party that are not paid by the Bill Due Date. Sprint, on the other hand, contends that *only* undisputed charges not paid by the Bill Due Date should be considered as Unpaid Charges. AT&T's position is reasonable and, most importantly, it – like AT&T's definition of "Non-Paying Party" – works in the context of both agreed language and disputed language.

Q. HOW DOES AT&T'S DEFINITION OF "UNPAID CHARGES" FIT INTO AGREED CONTRACT LANGUAGE?

A. In my discussion of the previous issue, I quoted section 2.4 of Attachment 7. That provision includes the term "Unpaid Charges," and, to make the provision work,

"Unpaid Charges" must – contrary to Sprint's position – include charges that are disputed, as well as charges that are undisputed.

Q. HOW IS THE TERM "UNPAID CHARGES" USED IN DISPUTED LANGUAGE?

A. The term is used throughout AT&T's proposed escrow language, which requires Unpaid Charges that the Billed Party disputes to be deposited in escrow. Assuming the Authority adopts AT&T's escrow language, as it should for reasons I discuss in connection with Issue IV.D(3), the term "Unpaid Charges" clearly must include disputed charges, since those are the charges to which the escrow requirement will apply. As with "Non-Paying Party," however, this issue should be resolved in favor of AT&T regardless of the escrow language, in order for the agreed language in which the term is used to work.

DPL ISSUE IV.D(3)

Should the ICA include AT&T's proposed language requiring escrow of disputed amounts?

Contract Reference: Att. 7, sections 1.12 – 1.18, 3.3.2

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING ESCROW LANGUAGE?

A. AT&T proposes escrow language for the ICAs, and Sprint objects to having any escrow language in the ICAs.

Q. WHAT IS THE THRUST OF AT&T'S ESCROW LANGUAGE?

A. It provides that if either Party disputes the other Party's bill, the Billed Party must deposit the disputed amount into an interest-bearing escrow account. When the dispute is resolved, the escrowed funds, along with accumulated interest, are

disbursed to the Billing Party or to the Billed Party, depending upon who prevails in the dispute.

Q. WHY DOES AT&T WANT ESCROW LANGUAGE IN THE ICAS?

A. AT&T has lost tens of millions of dollars to carriers that disputed bills without a proper basis. When those disputes were resolved in AT&T's favor, the carriers did not have the funds to pay the amounts owed. AT&T's proposed language is a reasonable method to assure that funds will be available if the dispute is resolved in AT&T's favor.

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

A. Under these ICAs, either Party could be the Billing Party, either Party could be the Disputing Party, and either Party could be required to place funds in escrow. In addition to paying to the Billing Party any non-disputed amounts by the Bill Due Date, the Disputing Party would be required to deposit an amount equal to any Disputed Amount (other than Disputed Amounts for reciprocal compensation) into an interest-bearing escrow account to be held by a qualifying financial institution designated as a Third-Party escrow agent.

Disbursement from an escrow account would occur upon resolution of the disputed issues in accordance with the ICA's Dispute Resolution provisions. In the event the Disputing Party loses the dispute, the Disputed Amounts held in escrow will be subject to Late Payment Charges. If the Disputing Party wins the dispute, it gets its money back, with interest. If there is a split decision on the dispute, the Billing Party and the Disputing Party will be reimbursed from the escrow account proportionately according to the resolution of the dispute.

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

A. Yes. The escrow requirements should serve to discourage the assertion of frivolous billing disputes that needlessly delay the Billing Party from receiving payments it is rightfully due. With no escrow requirement, the Billed Party can, in effect, make the Billing Party its banker by submitting a dispute rather than paying its bill. If the Billed Party is required to place the Disputed Amounts in escrow, that behavior should be discouraged. I do not mean to suggest that Sprint would engage in such machinations. Again, though, AT&T must concern itself with the likelihood that other carriers will adopt these ICAs – as should this Authority.

Q. IS AT&T'S ESCROW PROPOSAL UNUSUAL?

A. Absolutely not. Many ICAs include these escrow provisions, including the seven (7) ICAs that this Authority recently approved and that I previously identified.[17]

Q. WHAT IS SPRINT'S OBJECTION TO AT&T'S ESCROW PROPOSAL?

A. Sprint asserts that AT&T issues erroneous bills "that cause good-faith disputes" and that the status quo should not be changed by "conditioning disputes" on an escrow requirement.[18]

Q. HOW DO YOU RESPOND?

A. AT&T does sometimes make billing errors that result in good-faith disputes, but it is also true that there are many instances in which CLECs and CMRS providers

---

[17] See footnote 13 above.

[18] See Sprint's position statement on Issue IV.D(3) on the DPL.

dispute bills and turn out to be wrong. The prospect that Sprint might have to put a disputed amount in escrow as a result of an AT&T billing error, while certainly not desirable, also is not dreadful, because if Sprint prevails in the dispute, it gets its money back along with interest. The prospect of AT&T being deprived of payment altogether as a result of a dispute being resolved in AT&T's favor only after the CLEC or CMRS provider has become unable to pay is, I respectfully suggest, more undesirable.

As for Sprint's reference to the status quo, the emerging status quo is for carriers in this state to have Authority-approved language in their ICAs that require the Disputing Party to place Disputed Amounts in escrow. Sprint should be in the same position. And, more importantly, the general escrow practice should not be jeopardized by creating an exception in these ICAs that other carriers may adopt.

DPL ISSUE IV.E(1)

Should the period of time in which the Billed Party must remit payment in response to a Discontinuance Notice be 15 or 45 days?

Contract Reference: General Terms and Conditions, Part B – Definitions (under definition of Discontinuance Notice); Att. 7, section 2.2

Q. WHAT IS THE DISAGREEMENT BETWEEN THE PARTIES ON THIS ISSUE?

A. AT&T proposes that if the Billed Party receives a Discontinuance Notice for failure to pay its bills, the Billed Party must remit payment within 15 days to avoid disconnection of its services. Sprint proposes an overly liberal 45-day limit.

Q. WHY IS AT&T'S POSITION MORE REASONABLE THAN SPRINT'S?

A. AT&T's proposed 15-day period is sufficient time after receiving a Discontinuance Notice for a Non-Paying Party to pay unpaid billed charges – particularly since these charges are not disputed. Since the Discontinuance Notice cannot be sent to the Non-Paying Party until after the charges are already Past Due (meaning the carrier has already had 31 days to pay), the carrier actually has 46 days from the invoice date to avoid service disconnection. That is certainly a reasonable amount of time for a carrier to pay its undisputed charges.

Sprint, on the other hand, proposes a 45-day period, which would give the Non-Paying Party 76 days after the invoice date (at a minimum) to pay its undisputed bills and avoid service disconnection. Sprint maintains that such a long period is justified because "discontinuance of service is a drastic remedy."[19] AT&T certainly does not disagree that discontinuance is drastic, but discontinuance is an appropriate and proportionate response to a carrier that fails to pay its undisputed bills in a timely fashion.

DPL ISSUE IV.E(2)

Under what circumstances may a Party disconnect the other Party for nonpayment, and what terms should govern such disconnection?

Contract Reference: Att. 7, sections 2.0 – 2.9

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING DISCONNECTION FOR NON-PAYMENT?

A. There are four disagreements: 1) the time period for disconnection after a Discontinuance Notice (I already discussed that in the previous issue, and the decision on that issue would apply for sections 2.2 and 2.4); 2) Authority

[19] See Sprint's position statement on Issue IV.E(1) on the DPL.

involvement in disconnections; 3) the handling of disputed billed amounts (as tied into escrow accounts discussed in Issue IV.D(3)); and, 4) specific details regarding the actions the Billed Party can take to avoid disconnection. Having already addressed the first topic in Issue IV.E(1), I will now address each of the others.

Q. IN SECTIONS 2.3 AND 2.7, HOW DO THE PARTIES VIEW AUTHORITY INVOLVEMENT IN THE DISCONNECTION OF A NON-PAYING CARRIER?

A. AT&T proposes that the Billing Party will notify the Authority of any written notice of disconnection as required by any state order or rule. Sprint proposes that disconnections can only occur as provided by applicable law, and upon such notice as ordered by the Authority.

Q. PRACTICALLY, WHAT DOES THAT MEAN FOR THE PARTIES?

A. AT&T's proposed language means that once the specified circumstances that justify discontinuance are met, the Billing Party is permitted to proceed with discontinuance of the Billed Party's service, after providing notice to the Authority as may be required, but without first obtaining Authority approval to do so. By the time those contractual circumstances permitting discontinuance are met, the Billed Party has had ample time to cure the non-payment, and adding time for Authority approval (thus delaying further the Billing Party's receipt of payment due) simply is not appropriate. Sprint's proposed language would create just such a further delay.

Q. BUT ISN'T IT APPROPRIATE FOR THE AUTHORITY TO PLAY A ROLE IN THE DETERMINATION WHETHER DISCONNECTION IS WARRANTED.

A. AT&T is not saying the Authority should not play a role. At the end of the day, the disagreement really is about whether AT&T should have to first ask for the Authority's permission. If Sprint (or a carrier that adopts Sprint's ICA) is threatened with disconnection, it is free to take the initiative to petition the Authority to stop AT&T from discontinuing service for a time and to investigate whether disconnection is warranted. And the Authority can be sure that any bona fide carrier that believes that discontinuance is not warranted will take that initiative. The point is that once the non-payment of bills has reached the point that warrants discontinuance of service, AT&T should not be required to initiate an Authority proceeding to obtain permission to act. That has been the status quo for a number of years.

Q. DOESN'T AT&T'S POSITION GIVE AT&T UNILATERAL AUTHORITY TO DECIDE WHETHER THE CONTRACTUAL CIRCUMSTANCES WARRANTING DISCONNECTION HAVE BEEN MET?

A. No, it only gives AT&T authority to determine in the first instance that it believes those circumstances have been met. Again, if AT&T is wrong, the non-paying carrier will bring the matter to the Authority, and the Authority will ultimately make the judgment. Furthermore, AT&T is acutely aware of the potential liabilities to which it may be subject if it breached an ICA by improperly disconnecting a carrier. That quite simply is not going to happen.

Q. HAS ANY OTHER REGULATORY BODY PROVIDED GUIDANCE PREVIOUSLY WITH RESPECT TO THIS ISSUE?

A. Yes. In a prior arbitration,[20] the North Carolina Utilities Commission concluded that AT&T (then BellSouth) "may disconnect [CLEC] for nonpayment provided that BellSouth notifies the Commission and Public Staff of any proposed disconnection at the same time it notifies [CLEC]." That Commission's ruling anticipated the very circumstances I discussed above regarding the initiative that a carrier could undertake to ask a regulatory body to stop AT&T from discontinuing service. AT&T is asking nothing more than to incorporate into these ICAs language that is consistent with such a ruling that puts the burden exactly where it belongs without requiring AT&T to ask permission to discontinue service.

Q. ISSUE IV.E(1) ABOVE ADDRESSED A BILLED PARTY'S PAYMENTS OF *UNDISPUTED* CHARGES BY A CERTAIN TIME TO AVOID DISCONTINUANCE. WHAT ARE THE REQUIREMENTS FOR PAYMENT OF *DISPUTED* CHARGES TO AVOID DISCONTINUANCE?

A. AT&T proposes language that is consistent with the language it proposes for escrow in Issue IV.D(3). In addition to payment of all undisputed charges, AT&T proposes in sections 2.4.3 and 2.4.4 that the Non-Paying Party also pays all Disputed Amounts[21] into an interest-bearing escrow account. No amounts are deemed Disputed Amounts unless and until the Billed Party provides that written evidence to the Billing Party.

---

[20] See *Arbitration Order In the Matter of Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. P-474, Sub 10, Dated August 2, 2001, Decision on Finding of Fact No. 25 (Matrix Issue #94), page 97.

[21] This is all Disputed Amounts other than Disputed Amounts arising from terminating 251(b)(5) Traffic or ISP-Bound Traffic.

Sprint, on the other hand, offers no language for the handling of Disputed Amounts, contending that only nonpayment of undisputed amounts is grounds for discontinuance of service and that escrow requirements are unacceptable.

Q. UNDER SECTIONS 2.6.1 – 2.6.4 AS PROPOSED BY AT&T, WHAT ARE THE ACTIONS THAT A BILLED PARTY CAN TAKE TO AVOID DISCONTINUANCE OF SERVICE?

A. To avoid discontinuance of service under AT&T's proposed language, the Billed Party must do the following: a) pay all undisputed Unpaid Charges to the Billing Party, including, but not limited to, Late Payment Charges; b) deposit the disputed portion of any Unpaid Charges into an interest-bearing escrow account; c) timely furnish any assurance of payment requested in accordance with the Assurance of Payment requirements[22]; and, d) make a payment in accordance with any mutually agreed payment arrangements the Parties might develop.

Q. ARE THERE ANY OTHER ACTIONS THAT THE BILLING PARTY MIGHT TAKE IN THE EVENT THAT THOSE STEPS ARE NOT TAKEN BY THE BILLED PARTY?

A. Yes. AT&T proposes in sections 2.6.4.1 and 2.6.4.2 that the Billing Party may also exercise either or both of two other options. First, the Billing Party may refuse to accept any applications for new or additional services, and, second, the Billing Party may suspend completion of any pending requests for new or additional services.

Q. IS AT&T'S PROPOSED LANGUAGE INCLUDED IN ANY ICAS THAT THE AUTHORITY HAS APPROVED?

---

[22] AT&T's proposed language in Attachment 7, section 2.6.3 is supported by the rulings of the North Carolina Utilities Commission and the Florida Public Service Commission that BellSouth may disconnect for non-payment of requested deposit. See also footnotes 9 and 10.

A. Yes, AT&T's proposed language for the CLEC ICA appears in the seven (7) Authority-approved ICAs I have identified in my discussion of other issues.[23]

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. The Authority should accept all of AT&T's proposed language for the discontinuance process. This is reciprocal language and appropriately protects the Billing Party against increased losses resulting from the Non-Paying Party – including carriers that might adopt Sprint's ICAs – continuing to run up bills it does not pay.

DPL ISSUE IV.H

Should the ICA include AT&T's proposed language governing settlement of alternately billed calls via the Non-Intercompany Settlement System (NICS)?

Contract Reference: Att. 7, section 5

Q. WHAT IS AN ALTERNATELY-BILLED CALL?

A. Alternately-billed calls are calls that are billed as collect calls, billed to a third number, or billed to a credit card.

Q. WHAT IS THE NON-INTERCOMPANY SETTLEMENT SYSTEM ("NICS")?

A. NICS is the BellCore system that calculates non-intercompany settlement amounts due from one company to another within the same region. The calculations include amounts due from collect, third-number and credit card messages.

Q. WHAT IS THE DISAGREEMENT ABOUT SETTLEMENT OF ALTERNATELY-BILLED CALLS?

[23] See footnote 13 above.

A. AT&T proposes language to appropriately define the process that allows a full accounting for the billing of local and toll LEC-carried alternately-billed calls between the Parties and with all other participating LECs. Sprint, on the other hand, proposes that the ICAs include no language for such a process, and states as its reason that the "Parties have a separate RAO hosting Agreement that addresses the subject…." Sprint contends it would "create an unnecessary ambiguity" by having the same process in two different agreements.[24]

Q. HOW DO YOU RESPOND TO SPRINT'S CONTENTION?

A. In order to meet Sprint's objection, AT&T is willing to insert the following as a new first sentence for section 5.1.2: "This section 5.1.2 applies only if AT&T and Sprint do not have an RAO Hosting Agreement." That sentence should dispose of Sprint's concerns because it means that if there is an RAO Hosting Agreement between the Parties, then section 5.1.2 will not apply, and there can be no possible ambiguity.

Q. IF THERE IS AN RAO HOSTING AGREEMENT, AS SPRINT ASSERTS, WHY NOT JUST DELETE THE PROVISION?

Q. There are two reasons. First, the inclusion of the language – the substance of which Sprint evidently does not find objectionable – ensures that the Parties will be covered in the event that for some reason their RAO Hosting Agreement terminates or becomes ineffective. Second, carriers without RAO Hosting Agreements may adopt these ICAs, and AT&T's language needs to be included in those ICAs.

[24] See Sprint's position statement on Issue IV.H on the DPL.

Q. HAS THIS AUTHORITY PREVIOUSLY APPROVED AT&T'S PROPOSED LANGUAGE?

A. Yes. The seven (7) ICAs to which I have previously referred include AT&T's proposed language, but without the sentence AT&T has recently added in order to address Sprint's objection.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. The Authority should accept AT&T's proposed language for the reasons I have stated.

DPL ISSUE V.C(1)

Should the ICA include language governing changes to corporate name and/or d/b/a?

Contract Reference: General Terms and Conditions, Part A, sections 16.3 – 16.3.2

Q. WHAT IS THE PARTIES' DISAGREEMENT ON THIS ISSUE?

A. AT&T proposes language defining and governing billing account record changes due to corporate name changes (not related to any company code changes), and "Sprint does not believe AT&T's corporate name change language is necessary or appropriate."[25]

Q. WHAT BASIS DOES EACH PARTY HAVE FOR ITS POSITION?

A. AT&T is very experienced at corporate name changes by CLECs with which it has ICAs that have gone through mergers, acquisitions and/or transfers of assets. Even under the best of circumstances, changes to corporate names in carrier account records can be complex and time-consuming. AT&T incurs costs to make those account billing record changes – changes that AT&T otherwise would

[25] See Sprint's position statement on Issue V.C(1) on the Language Exhibit.

not make. AT&T is willing to make such changes, but Sprint should be accountable for any costs incurred by AT&T as a result of Sprint's action. The record order change charge that would apply to each account change service request is already contained in the ICA's Pricing Schedule, so there is no need or reason to negotiate any such charge as Sprint suggests.[26] All of the relevant information specific to name change requests (what constitutes a change, when charges apply, what the charge is, and where the charge is found) is included in the AT&T's proposed language for section 16.3.1.

Sprint, on the other hand, does not want to pay for any such changes, and states that "it is inappropriate to impose unilateral charges to update AT&T's internal records."[27] Apparently Sprint envisions AT&T absorbing all of the costs to make those Sprint-caused record changes.

Q. PLEASE DESCRIBE WHAT AT&T MUST DO WHEN A CARRIER CHANGES ITS CORPORATE NAME.

A. At a minimum, AT&T must change the corporate name on all of the carrier's Carrier Access Billing System ("CABS") Billing Account Numbers ("BANs"). A separate record change is required for each affected BAN, and AT&T is entitled to bill a record order charge for each BAN change. If a carrier changes its corporate name on resale accounts or other products not billed in CABS, i.e., billed in Customer Record Information System ("CRIS"), AT&T would require a record change for each of the carrier's End User accounts, and would be entitled

[26] See Sprint's position statement on Issue V.C(1) on the DPL.

[27] See Sprint's position statement on Issue V.C(1) on the DPL.

to bill a record order charge for each of those End User accounts. All of these circumstances are addressed by AT&T's proposed language.

Q. PLEASE ADDRESS AT&T'S PROPOSED LANGUAGE IN SECTION 16.3.2.

A. AT&T's proposed language simply suggests that the "Parties agree to amend this Agreement to appropriately reflect any name change..." Since the ICAs bear the names of the Parties and identify those named Parties with the rights and obligations set forth in the ICAs, it makes perfect sense to amend the ICAs to reflect changes to a Party's name. Sprint, however, contends that such an amendment is "unnecessary and inappropriate" – but does not say why. AT&T will be interested to see the explanation for Sprint's position in Sprint's direct testimony.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. The Authority should accept AT&T's proposed language because it is clear in its governance of corporate name changes, and appropriately requires Sprint to bear the cost of necessary changes to AT&T's records to reflect a change in Sprint's name – a cost that Sprint causes.

DPL ISSUE V.C(2)

Should the ICA include language governing company code changes?

Contract Reference: General Terms and Conditions, Part A, sections 16.4 – 16.4.2

Q. WHAT IS THE PARTIES' DISAGREEMENT ON THIS ISSUE?

A. It is the same disagreement I just discussed in connection with corporate name changes: AT&T proposes language defining and governing billing account record

changes due to company code changes, and "Sprint does not believe AT&T's company code change language is necessary or appropriate."[28]

Q. WHAT ARE THE COMPANY CODES AT ISSUE IN THIS SECTION, AND HOW ARE THEY USED?

A. Operating Company Number ("OCN") and Access Carrier Name Abbreviation ("ACNA") are the company codes at issue in this section. OCNs and ACNAs are assigned by industry agencies such as Telcordia or the National Exchange Carriers Association (NECA), and appear on each carrier's End User accounts or circuits. These codes are used throughout the industry to ensure accurate identification, provisioning, maintenance, billing, call routing and inventorying. In that regard, AT&T uses OCNs and ACNAs in its directory databases, billing systems and network databases (LMOS, TIRKS, RCMAC, etc.).

Q. PLEASE DESCRIBE WHAT AT&T MUST DO WHEN A CARRIER CHANGES COMPANY CODES.

A. When a carrier changes OCNs/ACNAs, AT&T must change the OCN/ACNA in every AT&T system for every End User account or circuit that is affected by the code change. As specified in AT&T's proposed language for section 16.4.2, the carrier "must submit a service order…for each End User record (or equivalent) or each circuit ID number as applicable." The service order is distributed to AT&T's downstream systems and OCN/ACNA changes are made. Further, code change information is passed throughout the industry to update other databases, such as the Local Exchange Routing Guidelines (LERG) database that assists carriers in properly routing and billing originating and terminating calls.

[28] See Sprint's position statement on Issue V.C(2) on the Language Exhibit.

Q. WHAT BASIS DOES EACH PARTY HAVE FOR ITS POSITION?

A. When AT&T changes company codes in all of a carrier's account records and AT&T and industry systems, the costs to AT&T are substantial. But for Sprint's (or an adopting carrier's) decision to merge, acquire or transition accounts, these are changes that AT&T otherwise would not have to make. AT&T is willing to make such changes, but the carrier should be accountable for any costs incurred by AT&T for the carrier's unilateral decision. The record order change charge that would apply to each account change service request is already contained in the ICA's Pricing Schedule, so there is no need or reason to negotiate any such charge as Sprint suggests.[29] All of the relevant information specific to company code change requests (what constitutes a change, when charges apply, what the charge is, and where the charge is found) is appropriately included in AT&T's proposed language for sections 16.4.1 and 16.4.2.

Sprint does not want to pay for any such changes, and states that "it is inappropriate to impose unilateral charges to update AT&T's internal needs associated with a company code change."[30] As with the corporate name changes that are the subject of the previous issue, Sprint apparently envisions AT&T making all of the Sprint-caused company code record changes with AT&T absorbing all of the costs to make those changes.

Q. DOES AT&T'S PROPOSED LANGUAGE FOR SECTION 16.4.1 INCLUDE ANY OTHER REQUIREMENTS FOR COMPANY CODE CHANGES?

---

[29] See Sprint's position statement on Issue V.C(2) on the DPL.

[30] See Sprint's position statement on Issue V.C(2) on the DPL.

A. Yes. AT&T's proposed language in section 16.4.1 requires a carrier to provide a 90-day advance written notification of its intent to make any company code changes and to obtain AT&T's consent. Under AT&T's proposed language, AT&T "shall not unreasonably withhold consent," but that consent "is contingent upon payment of any outstanding charges…" billed against any of the assets associated with the company whose code is changing, or any other charges billed to the carrier. This simply means that before any company code changes are made that might affect the billing responsibility of carrier accounts going forward, all current billing between AT&T and the affected Parties must be in good standing.

Q. ARE THERE ANY OTHER CHARGES FOR WHICH A CARRIER COULD BE LIABLE WITH RESPECT TO COMPANY CODE CHANGES?

A. Yes. Under certain circumstances related to collocation, a carrier could be responsible for paying charges to AT&T for re-stenciling, re-engineering, changing locks and/or any other necessary work. These circumstances are appropriately addressed in section 16.4.2 of AT&T's proposed language.

Q. AT&T'S PROPOSED LANGUAGE FOR SECTION 16.4.1 OF THE CLEC ICA IS SLIGHTLY DIFFERENT FROM AT&T'S PROPOSED LANGUAGE FOR SECTION 16.4.1 OF THE CMRS ICA. WHY IS THERE A DIFFERENCE?

A. The only difference between the two proposed sets of language is the elimination from the wireless ICA of the phrase "251(c)(3) UNEs." CMRS providers are not entitled to obtain UNEs under an ICA, so the UNE reference has no place in the CMRS ICA.

Q. WHAT ABOUT THE DIFFERENCES IN AT&T'S PROPOSED WIRELINE AND WIRELESS LANGUAGE IN SECTION 16.4.2?

A. The only substantive difference describes charges for CMRS Provider Company Code Changes as being "contained in the applicable AT&T-9STATE tariffs." Applicable charges for CMRS company code changes are found in state tariffs, while applicable charges for CLEC company code changes are found in the Pricing Schedule.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. The Authority should accept AT&T's proposed language because it provides clear terms for carrier-requested company code changes, and provides for payment by the carrier of charges that pay for AT&T's costs and to which AT&T is entitled.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.