

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

October 24, 2019

RE:

Docket No. 19-00099

*AT&T Tennessee Complaint Against
Cellular South, Inc. D/B/A C Spire*

**AT&T TENNESSEE COMPLAINT AGAINST
CELLULAR SOUTH, INC. D/B/A C SPIRE**

Pursuant to TPUC Rule 1220-01-02.09, BellSouth Telecommunications, LLC d/b/a AT&T Tennessee (“AT&T”) brings this Complaint against Cellular South, Inc. d/b/a C Spire (“C Spire”) to collect amounts due AT&T under the Interconnection Agreement (“ICA”) between the parties. Specifically, AT&T respectfully asks that, as to the parties’ use of shared facilities in Tennessee, the Commission direct C Spire to (a) refund to AT&T the amount of \$96,044, plus interest, that AT&T has overpaid for its share of those facilities, and (b) cease efforts to collect an additional \$138,060 from AT&T.

OVERVIEW OF THE DISPUTE

1. C Spire and AT&T deliver telecommunications traffic to one another using “two-way interconnection” trunks and share the costs of the facilities based on the relative traffic volumes each carrier delivers to the other.¹

2. Under the ICA, C Spire pays AT&T 100% of the charges for the interconnection facilities and then bills AT&T for AT&T’s portion using a “shared facility factor”² based on the

¹ ICA Section IV.B. “In the event such facilities are used for two-way interconnection, the appropriate recurring charges for such facilities will be shared by the Parties based on percentages equal to the estimated or actual percentages of traffic on such facilities.”

relationship AT&T-originated traffic bears relative to total traffic carried over the shared two-way interconnection facilities.³ Although the ICA contemplates that in some instances, C Spire can bill AT&T based on an estimated shared facility factor,⁴ ultimately the billings can be trued-up using a shared facility factor based on actual traffic volumes. Indeed, either party to the ICA is entitled to request an audit, as frequently as once a year, in order to satisfy themselves that the shared facility factor is accurate.⁵ Thus, if over some period of time C Spire uses an outdated or estimated shared facility factor that results in AT&T being billed incorrectly for its portion of the shared facilities, the billing can be fixed once actual data are available.

3. Here, C Spire's use of an outdated or estimated shared facility factor resulted in AT&T being billed incorrectly for its portion of the shared facilities. Looking back to 2016, C Spire was billing AT&T using a shared facility factor that implicitly assumed AT&T's originating traffic was a higher percentage of total traffic than was actually the case. Beginning in 2017, AT&T provided C Spire with information demonstrating that AT&T's relative traffic volumes were lower than what had been previously used to determine AT&T's responsibility for the shared facilities. Consequently, by providing C Spire with shared facility factors based on *actual* (as opposed to outdated or estimated) traffic data, AT&T determined it was owed a

² The percentage of AT&T originated traffic to total traffic carried over the facilities is typically referred to in the industry as the "shared facility factor."

³ ICA Section VI.A.4.b. "For two-way interconnection facilities purchased from BellSouth by Carrier, BellSouth will bill Carrier for the entire cost of the facility. Carrier will then apply the BellSouth originated percent against the total two-way interconnection facility charges billed by BellSouth to carrier. Carrier will invoice BellSouth on a monthly basis, the proportionate cost for the facilities utilized by BellSouth."

⁴ *Id.*

⁵ ICA Section XV.

\$422,525 refund of what it had already paid C Spire (\$234,104 of which is for Tennessee facilities).⁶

4. In the context of this Complaint, the terms “actual” traffic data and “actual” shared facility factors are used to mean that the information being used to develop the factors aligns in time with the corresponding shared facility billing. For example, AT&T’s payments for its use of shared facilities in 2Q2017 should have been based on an *actual* shared facility factor calculated using usage data from the prior quarter (*i.e.*, 1Q2017). In contrast, billing AT&T for its 2Q2017 use of shared facilities using a shared facility factor from, say, 4Q2014 would constitute use of an *outdated* or *estimated* shared facility factor that should be corrected once an *actual* 1Q2017 shared facility factor could be used to determine correct 2Q2017 billing.

5. The impact of using *actual* shared facility factors could not have been a surprise to C Spire. The shared facility factor – *i.e.*, the ratio of AT&T originated traffic relative to all traffic carried over the shared two-way trunks – has been in decline over the past several years as AT&T has continued to lose landlines and landline-originated minutes of use (“MOUs”) when customers leave AT&T’s traditional wireline services in favor of wireless and IP-based services.

6. The FCC’s latest *Voice Telephone Services Report*, released November 2018, shows that from December 2008 through June 2017, the number of traditional ILEC switched access lines in Tennessee declined by 58%, from 2,297,000 to 969,000. That tracks the national trend, which saw nationwide ILEC switched access lines drop by 64% during the same period, from 117,968,000 to 42,401,000.

⁶ AT&T has sought \$422,525 in refunds from C Spire. A majority of those amounts (\$234,104 or about 55% of the total) relate to Tennessee facilities. The remainder of the amounts at issue involve facilities in Alabama, Florida, and Mississippi. Matters involving issues in those states are clearly beyond the jurisdiction of this Commission. There is a Complaint pending in Mississippi to address the amount at issue in that state.

7. In documents and discussions over the past two years, C Spire has raised a number of specious arguments asserting that AT&T cannot update and correct its traffic volumes and factors. AT&T notified C Spire on October 19, 2017, that AT&T would be withholding payments on C-Spire's shared facility billings until AT&T had recovered the \$278,824. Once AT&T had withheld that amount, it resumed paying C Spire's monthly shared facility bills. In response to AT&T's October 19, 2017, demand for a refund of \$278,824 based on *actual* (instead of estimated or outdated) shared facility factors (\$138,060 of which relates to Tennessee traffic), C Spire waited five months before sending AT&T a March 12, 2018, letter alleging, among other things, that the ICA does not allow AT&T to update/adjust traffic factors. AT&T responded on April 5, 2018, asserting that C Spire is incorrect.

8. Over the next several months there were sporadic discussions between the parties, but those were largely unproductive. On April 1, 2019, C Spire sent a demand letter for funds it alleges AT&T had improperly withheld and a request that AT&T designate representatives authorized to resolve the matter in discussions between the parties. AT&T responded on April 9, 2019, explaining that: (a) AT&T has provided all information C Spire needs to verify AT&T's shared facility factors going back to 2016, (b) nothing in the ICA precludes AT&T's claim that its payment to C Spire be adjusted based on *actual* (as opposed to outdated) shared facility factors, (c) based on the *actual* shared facility factors, AT&T is due an additional \$143,700 (some \$96,044 of which is for Tennessee facilities), and (d) AT&T identified a person authorized to negotiate a resolution.

9. At this time, AT&T has not withheld any payments against the \$143,700. It is still owed that amount.

10. The pivotal issue before the Commission is whether the ICA permits either party to use *actual* shared facility factors when doing so ensures that payments between the parties will be based on *actual* data, rather than estimated or outdated data. If so, there is an additional question of whether the express terms of the ICA limit the time period for which such corrections can be made (it does not), or whether instead, the Tennessee statutory six-year limitation on contract actions applies.⁷

11. AT&T provided C Spire with *actual* shared facility factors which, pursuant to the ICA, C Spire should use to re-calculate AT&T's portion of shared two-way facilities costs going back to 2016. Nothing in the ICA precludes AT&T from providing C Spire with *actual* shared facility factors, nor is there anything which precludes AT&T from seeking a refund of its overpayments. AT&T's claim for refunds is timely under Tennessee's statute of limitations.

PRAYER FOR RELIEF

AT&T respectfully requests that C Spire be directed to refund to AT&T the amount of \$96,044 (the Tennessee portion of the remaining \$143,700 C Spire still owes AT&T), plus statutory interest from April 1, 2019, the date AT&T informed C Spire that such refunds were due and owing. AT&T further respectfully requests that the Commission direct C Spire to cease all efforts to collect \$138,060 (the Tennessee portion of the \$278,824 AT&T has withheld from C Spire), and find that, based on application of the *actual* shared facility factors, those funds shall rightfully remain with AT&T.

WHEREFORE, AT&T respectfully requests that C Spire be directed to refund to AT&T the amount of \$96,044, plus statutory interest from April 1, 2019, the date AT&T notified C Spire

⁷ See, e.g., Tennessee Code Annotated 28-3-109.

such amounts were due and owing and to cease efforts to collect the \$138,060 AT&T has withheld to recover the \$234,104 it was rightfully owed.

Respectfully submitted, this 24th day of October, 2019

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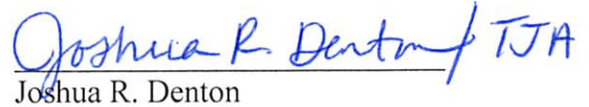
CERTIFICATE OF SERVICE

I, Joshua R. Denton, attorney of record for BellSouth Telecommunications, LLC d/b/a AT&T Tennessee, hereby certify that I have this day caused to be filed and delivered by overnight delivery, a copy of the above and foregoing document to:

ATTORNEYS FOR CELLULAR SOUTH, INC.

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This 24th day of October, 2019.


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