

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

RE:

Docket No. 19-00099

**AT&T Tennessee Complaint Against
Cellular South, Inc. d/b/a C Spire**

**ANSWER OF BELL SOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T
TENNESSEE TO CELLULAR SOUTH, INC. d/b/a C SPIRE'S COUNTERCLAIM**

BellSouth Telecommunications, LLC d/b/a AT&T Tennessee ("AT&T"), submits the following Answer to the Counterclaim filed by Cellular South, Inc. d/b/a C Spire ("C Spire").

I. PARTIES

These paragraphs name the Parties to this dispute and do not require a response.

II. JURISDICTION

AT&T admits that C Spire and AT&T are parties to an Interconnection Agreement ("Agreement") dated September 1, 2003 that was approved by the Tennessee Public Utility Commission ("TPUC"). AT&T admits that TPUC retains jurisdiction to resolve disputes under the Agreement.

III. DESIGNATED CONTACTS

These paragraphs name the designated contacts to this dispute and do not require a response.

IV. OVERVIEW OF THE DISPUTE

1. All allegations in paragraph 1 under section IV are denied, except that AT&T admits that C Spire and AT&T are parties to the Agreement and that this dispute arises out of and is governed by the Agreement.

2. All allegations of paragraph 2 under section IV are denied, except as expressly admitted herein. AT&T admits that it sent a September 19, 2017 letter notifying C Spire that use of *actual* shared facility factors (rather than an outdated or estimated one) to allocate costs of two-way shared facilities resulted in AT&T being owed \$278,824.49. AT&T further admits that on April 9, 2019, it informed C Spire that, based on additional review of the shared facility billing, AT&T is owed an additional \$143,700.44. Under the ICA, AT&T was within its rights to provide *actual* shared facility factors to be used to allocate the costs of shared two-way facilities for the prior three years.

3. All allegations of paragraph 3 under section IV are denied. The terms of the Agreement speak for themselves and any allegations interpreting the Agreement contrary to those terms are expressly denied. In further response to the allegations of this paragraph, AT&T states that although from February 2016 to August 2017, C Spire did not request, nor did AT&T provide, the actual shared facility factors, AT&T did provide those factors on October 19, 2017. At that point C Spire had the information it needed to correct its prior shared facility bills, but it failed to do so. The shared facility factors AT&T provided to C Spire are based on actual traffic volumes for the specific time periods covered by each factor. AT&T is recovering amounts it overpaid only because C Spire used outdated, and thus incorrect, shared facility factors when it billed AT&T. Section IV.B of the ICA, which is cited by C Spire in footnote 1 of the Counterclaim, expressly states that "the appropriate charges for such facilities will be shared by the Parties based upon percentages equal to the estimated or actual percentage of traffic on such facilities." Nothing in that Section places any limits on the time period for correcting and updating the traffic factors so that they are based on actual data. AT&T further denies that Section VII.D (cited in footnote 3 of the Counterclaim) applies here. That section

applies only when "either Party cannot measure traffic" for the listed categories. Here AT&T has provided C Spire with actual shared facility factors based on actual traffic volumes. AT&T is entitled to dispute incorrect billing under the ICA. Once AT&T provided C Spire with actual shared facility factors, it was entitled to recover amounts it overpaid. Finally, AT&T expressly denies that Section VI.A.4 of the agreement provides that "if AT&T does not provide actual traffic measurements, the Parties are to use 'the prior months undisputed' traffic measurements." Notwithstanding this denial, AT&T has provided actual traffic measurements and thus Section VI.A.4 is inapplicable.

4. All allegations of paragraph 4 under section IV are denied. The terms of the Agreement speak for themselves and any allegations interpreting the Agreement contrary to those terms are expressly denied. In further response to the allegations of this paragraph, AT&T expressly denies it has refused to provide the data supporting its calculation of AT&T originated traffic during the periods in dispute. Rather, AT&T has provided all relevant information necessary for C Spire to correct its bills for AT&T's use of shared facilities. Specifically, for the shared facilities at issue AT&T has provided its originating minutes, as well as total minutes carried over the facilities, as reflected in the Carrier Access Billing System ("CABS"), for each quarter at issue. This is all C Spire needs to render correct bills. AT&T denies that it has refused to provide C Spire with any lawfully permitted underlying traffic or other data. The instant billing dispute is a result of C Spire using an outdated shared facility factor for several quarters. The use of *actual* shared facility factors results in refunds due AT&T.

5. All allegations of paragraph 5 under section IV are denied. The terms of the Agreement speak for themselves and any allegations interpreting the Agreement contrary to those terms are expressly denied. In further response to the allegations of this paragraph AT&T states

Section XV of the Agreement establishes the process for auditing traffic volumes, but neither party has requested an audit for the time periods at issue. AT&T's request for a refund is driven by AT&T's provision of *actual* shared facility factors going back to 2016. C Spire has not, and cannot, point to any provision of the ICA that precludes AT&T from (a) providing C Spire with *actual* shared facility factors, and (b) recovering overpayments resulting from application of the actual data.

6. AT&T admits that C Spire and AT&T have not been able to resolve this dispute, but expressly denies that C Spire is entitled to recovery from AT&T under the theories alleged, or any other theories.

V. PRAYER FOR RELIEF

In responding to the Prayer for Relief, AT&T denies that C Spire is entitled to any of the relief requested under the theories alleged, or any other theories.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a cause of action upon which relief can be granted.
2. 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 filed.
3. The parties agreed to share the cost of joint use facilities for the transmission and delivery of communications traffic. The applicable Agreement includes a provision for true up of the facility costs based on traffic volumes for which each party is responsible. The only dispute is over the correct billing based on actual traffic volumes. Updated factors reflecting actual traffic

volumes apply now and C Spire fails to abide by these factors and pay the associated billing adjustments pursuant to the ICA.

Respectfully submitted, this 10th day of January, 2020.

By:



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BellSouth Telecommunications, LLC d/b/a AT&T Tennessee

CERTIFICATE OF SERVICE

I, Jeremy R. Goolsby, 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 U.S. Mail and electronic mail, a copy of the above and foregoing document to:

ATTORNEYS FOR CELLULAR SOUTH, INC.

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This 10th day of January, 2020.



Jeremy R. Goolsby