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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

REBUTTAL TESTIMONY OF

SCOTT McPHEE

ON BEHALF OF AT&T TENNESSEE

April 13, 2020

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

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

Q. ARE YOU THE SAME SCOTT McPHEE WHO FILED DIRECT TESTIMONY ON BEHALF OF AT&T TENNESSEE ON APRIL 6, 2020?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I will respond to points in the April 6, 2020, Direct Testimony of C Spire witness Lee Puckett. Specifically, I will explain that:

(a) the Commission should not consider his testimony about a percent local usage (or "PLU") factor, because a PLU factor is not relevant to this dispute;

(b) his testimony about call detail is not relevant for a number of reasons, the most compelling of which is that C Spire has presented no call detail data to the Commission, even though Mr. Puckett has now conceded that C Spire had the ability to capture those data and thus could have presented that detail in this proceeding had it been inclined to do so, but it did not;

(c) he is simply wrong in suggesting that AT&T Mobility's decision to route traffic over the shared facilities is somehow improper because AT&T Mobility, like any other carrier, makes its own decisions about how to route its traffic, and AT&T Tennessee has no input into those decisions;

(d) his arguments that C Spire issued "correct" bills to AT&T clearly is wrong because, as explained in my Direct Testimony and in this Rebuttal Testimony, the bills C Spire issued to AT&T throughout the period at issue clearly are based on incorrect shared facility factors;

(e) his testimony that AT&T's claim goes back as far as the statute of limitations allows is clearly wrong – as I explained in my direct testimony, Tennessee law allows AT&T's claim to go back six years, but AT&T is only going back as far as its records will support (even though, if AT&T had kept shared facility factors back to 2013, its claim would be some $215,000 larger than it is);

(f) he is simply wrong when he suggests that AT&T employee G. W. Hodges said that C Spire could keep billing using a 2012 shared facility factor – per Mr. Hodges' prefiled Rebuttal Testimony in this proceeding, Mr. Hodges never made any such statement;

(g) as the Hearing Officer has already found, this Commission, in approving the Interconnection Agreement ("ICA") that governs this dispute, clearly did not somehow suggest that a regulatory body other than this

Commission can interpret and enforce how the ICA that this Commission reviewed and approved, in compliance with federal law, is interpreted and applied within the state of Tennessee; and

(h) he is simply mistaken in suggesting that the ICA's provisions requiring billing within one year is somehow applicable here, because there is no question that C Spire issued (and AT&T paid) bills within one year of each quarter – the issue here is not whether bills were timely, but rather whether they were accurate, and it is clear C Spire had ample reasons to know that those bills were inaccurate yet remained silent because it was in C Spire's financial interest to do so.

Q. IS THERE ANYTHING IN MR. PUCKETT'S TESTIMONY WHICH CAUSES YOU TO CHANGE YOUR POSITION THAT C SPIRE OWES AT&T TENNESSE $234,104 IN REFUNDS?

A. No.

Q. AT PAGES 6-7. MR. PUCKETT ARGUES AT&T HAS FAILED TO PROVIDE AN "AUDITABLE PLU FACTOR." WHAT IS AT&T'S RESPONSE?

A. C Spire and Mr. Puckett are misreading the Interconnection Agreement. The "PLU" or "Percent Local Usage" factor is used to categorize traffic so appropriate *per-minute-of-use usage-based charges* can be applied to terminating minutes of use that one carrier sends to another. This case, however, has nothing to do with minutes-of-use based charges, nor does it have anything to do with whether traffic is originating or terminating. Rather, it is about allocating total costs of facilities C Spire and AT&T share, using a cost allocation methodology spelled out in the ICA at Section V.B. Section V.B never mentions the PLU, nor should it. The PLU factor has nothing to do with this case and Mr. Puckett's reference to it is in error.

Q. CAN YOU PLEASE PROVIDE A SIMPLIFIED EXAMPLE TO EXPLAIN HOW THE PLU WORKS AND WHY IS DOES NOT APPLY IN THIS CASE?

A. Yes. Assume in 2003 Carrier X and Carrier Y entered the same Interconnection Agreement at issue here and then sent local calls and long distance calls back and forth to each other over facilities owned entirely by Carrier X. Whenever Carrier Y sent traffic to Carrier X, Carrier Y would have to pay various *per-minute charges* to Carrier X for Carrier X's work in completing the calls. Those per-minute charges varied substantially based on whether the call was a local call (lower per-minute charges) or a long-distance call (much higher per-minute charges). The PLU factor was used in determining the split between local and long distance so that the appropriate per-minute charges could be applied to each type of traffic Carrier Y sent to Carrier X. If, say, in a given month 80% of the minutes Carrier Y sent to Carrier X were local, the PLU would have been 80% for that month. Carrier Y would have paid Carrier X's local traffic charges for 80% of the traffic and would have paid applicable carrier access charges for the other 20% of traffic (the long distance traffic).[1]

The key point is, the PLU was a tool used to assess applicable *per-minute charges* to terminating calls. The definition of the PLU in the Interconnection Agreement makes that clear –

> Percent Local Usage (PLU) is defined as a factor to be applied to terminating minutes of use. The numerator is all local minutes of use. The denominator is the total minutes of use including Local and Non-Local.

[1] Long distance traffic can be either intrastate or interstate, and different access charges apply to each. That is why the ICA also references a Percent Interstate Use, or "PIU," factor used to assign the long distance traffic to the appropriate bucket.

Q. YOU SAID THE PLU "WAS" USED – PAST TENSE. IS IT NO LONGER BEING USED TODAY?

A. As a practical matter, no it is not. From the passage of the Telecommunications Act of 1996, carriers argued over whether traffic should be considered local or long distance and over how many types of fees should be applied to the respective traffic.

But as markets evolved and became more competitive, the FCC slowly reformed this pricing structure over a period of years and, in a major step in 2017, implemented a system known in the industry as "bill and keep." For purposes of this discussion, implementation of "bill and keep" meant that most of the fees went away, and the PLU became largely irrelevant.

Q. SO, WHAT DOES THE PLU HAVE TO DO WITH THIS CASE?

A. Nothing. As I explained above, prior to access reform and "bill and keep," the PLU was used to help ensure *per minutes of use* charges were being properly applied. But this case has nothing to do with per minutes of use charges on terminating traffic. Instead, this case is about determining how the costs of shared facilities are to be allocated between C Spire and AT&T. The methodology for accomplishing that is set forth at ICA Section V.B of the parties' ICA --

> [AT&T] and [C Spire] will share the cost of the two-way trunk group carrying both Parties [sic] traffic proportionately. [AT&T] will bear the cost of the two-way trunk group for the proportion of the facility utilized for the delivery of [AT&T] originated Local Traffic to [C Spire's] POI [Point of Interconnection] within [AT&T's] service territory (calculated based on the number of minutes of traffic identified as [AT&T's] divided by the total minutes of use on the

> facility), and [C Spire] will provide or bear the cost of the two-way trunk group for all other traffic, including intermediary traffic.

There is no reference to a PLU in that section, nor should there be. The language of Section V.B stands on its own, and it says that the costs of shared facilities are allocated between the carriers based on the Shared Facility Factor described throughout my Direct Testimony and at ICA Section V.B.

Q. TURNING TO ANOTHER ISSUE MR. PUCKETT ADDRESSES, HE MAKES MUCH OF THE FACT THAT AT&T CAN NO LONGER PROVIDE CALL DETAIL FOR EACH MINUTE OF USE THAT WAS PART OF THE SHARED FACILITY FACTOR CALCULATIONS FOR JANUARY 2017 THROUGH SEPTEMBER 2017. WHAT IS YOUR RESPONSE?

A. I addressed this in my Direct Testimony, and all of those arguments remain valid. But as I explain below, Mr. Puckett's own testimony also proves that there is no merit to his argument.

As I noted in my Direct Testimony, the general methodology AT&T uses to calculate the Shared Facility Factors has been the same over the years, and C Spire never questioned it until this issue arose. Each month the system captures the minutes of use for AT&T-originated local traffic, C Spire traffic, and "intermediary" traffic (which is traffic other carriers are directing to C Spire over the two-way facilities), and those data are used to calculate the shared facility factor.

As the minutes of use are identified, the system also captures call detail records for each call, including, without limitation, the date and time the call was placed, when it ended, the type of call it was, the telephone number of the caller, the telephone number of the called party, and how it was routed. All carriers routinely capture that information, and

all routinely erase the records after some predetermined length of time. As I noted in my Direct Testimony, AT&T erases those records on a rolling two-year basis. C Spire does the same after eighteen months. Every telephone company follows the same basic process.

Despite that, C Spire now implies that if AT&T can no longer provide call detail from 2016 and 2017, then the Commission cannot be sure the Shared Facility Factors for that period are accurate. But that is wrong, for at least three reasons.

First, as I noted throughout my Direct Testimony, C Spire could have asked AT&T for updated Shared Facility Factors at any time, but did not do so, apparently because it was happy with the *status quo*. It knew AT&T was overpaying and was happy to let that continue.

Second, and again as noted in my Direct Testimony, if C Spire has questions about AT&T's Shared Facility Factor methodology, it is welcome to audit call detail information for all or part of the last two years. AT&T has always calculated the factors the same way, so if we are doing it correctly today, we were doing it correctly in 2016 and 2017.

Third, Mr. Puckett's own testimony acknowledges C-Spire has always been able to independently check the Shared Facility Factor AT&T has provided over the years. If it had concerns about the factors, it could have performed its own assessment.

Q. HOW COULD C SPIRE EVALUATE THE FACTORS ON ITS OWN?

A. Mr. Puckett, at page 8 of his Direct Testimony, acknowledges that C Spire and its agents have the ability to determine "what traffic AT&T was delivering to C Spire over the Interconnection Facilities." Obviously, C Spire also knows what traffic it is sending to AT&T. Joining those two data sets together gives C Spire a full picture of the traffic

flowing over the shared facilities. Thus, C Spire has had, now and in the past, the ability to conduct an independent assessment of the Shared Facility Factor on its own, with no input from AT&T whatsoever. These facts clearly contradict Mr. Puckett's assertion, at page 7 of his Direct Testimony, that "AT&T controls the actual traffic measurements." As Mr. Puckett himself concedes, C Spire clearly can evaluate the shared facility factors.

Of course, AT&T does not know whether C Spire has done that or not. But if C Spire had done so, and if that evaluation had been different than what AT&T has presented, it is fair for all of us to assume that Mr. Puckett, on behalf of C Spire, would have presented that information to the Commission in his Direct Testimony, but he did not. And it is easy to understand why -- as shown in my Direct Testimony, the evidence overwhelmingly supports AT&T's position that the 40.21% factor C Spire relies on is grossly overstated, and C Spire has no financial incentive to present that evidence to the Commission.

My point is simply this – Mr. Puckett's testimony concedes C Spire has had the ability to verify the shared facility factors on its own. It cannot now complain that AT&T erased call detail records when it had its own ability to capture them all along.

Q. WHAT IS YOUR RESPONSE TO MR. PUCKETT'S ASSERTION (AT PAGES 7-8 OF HIS DIRECT TESTIMONY) THAT C SPIRE IS STILL UNABLE TO GET CALL DETAIL INFORMATION FROM AT&T, AND THAT HE HAS HAD TO "PRESS" AT&T TO OBTAIN UPDATED SHARED FACILITY FACTORS?

A. As a threshold matter, Mr. Puckett acknowledges AT&T has been providing updated shared facility factors since this dispute began.

That said, I disagree with his assertions that (1) he has to "press" AT&T to provide them, and (2) AT&T has refused to provide call detail information so C Spire can verify

the shared facility factor percentages. AT&T has provided timely updates to the shared facility factor every quarter since September 2017. And, as I noted above, if C Spire wants the underlying call detail for any or all of the past two years, all it has to do is ask. To the best of my knowledge, no one at AT&T has refused to provide those data.

Q. ALSO, AT PAGE 8 OF HIS DIRECT TESTIMONY MR. PUCKETT EXRESSES CONCERN THAT SOME OF THE THIRD-PARTY TRAFFIC INCLUDED IN THE DENOMIMATOR OF THE SHARED FACILITY FACTOR COMES FROM AT&T MOBILITY, THE WIRELESS AFFILIATE OF AT&T TENNESSEE. PLEASE RESPOND.

A. That is no cause for concern. His implication is that AT&T Mobility and AT&T Tennessee are somehow conspiring to increase the percentage of third-party traffic in the shared facility factor calculation in order to decrease the shared facility factor and lower AT&T Tennessee's payment obligation. But as I explain below, his concerns are unfounded.

Since the Telecommunications Act of 1996 went into effect, regional Bell operating companies (including AT&T Tennessee's predecessor, BellSouth) have been subject to stringent requirements addressing transactions with their affiliates. Any affiliate transactions would (a) have had to be through public documents, (b) include rates, terms and conditions that the Bell companies would be willing to offer to unaffiliated carriers, and (c) typically been subjected to regulatory review and approval.

Thus, when it came to making decisions about how to route traffic, AT&T Mobility was in the same shoes as C Spire or any other carrier. Like any other carrier, AT&T Mobility could decide to establish direct connections with carriers with which it exchanged traffic, or it could decide (as it did here, and as many other unaffiliated carriers have done)

to route its traffic over indirect connections. AT&T Tennessee (or BellSouth, at the time) had no say in those decisions.

Additionally, while one could read Mr. Puckett's Direct Testimony to suggest that it may be unusual for a third party (like AT&T Mobility) to decide to route its traffic to C Spire over indirect connections, that simply is not the case. In my experience, and as confirmed through discussions I've had with others at AT&T who provide Wholesale services to other carriers, it is not at all unusual for wireless carriers to route traffic through indirect interconnections.

Q. MR. PUCKETT ASSERTS AT FOOTNOTE 18 OF HIS DIRECT TESTIMONY THAT HE HAS ATTEMPTED TO CONVINCE AT&T MOBILITY TO CONNECT DIRECTLY WITH C SPIRE, BUT THAT AT&T MOBILITY IS NOT INTERESTED. WHAT IS YOUR RESPONSE TO THAT?

A. I simply cannot address that issue. As I've said, those decisions are made 100% by AT&T Mobility, just as they are made by the many other wireless carriers that are not affiliated with AT&T Tennessee. His point is entirely irrelevant to this proceeding.

Q. MR. PUCKETT SAYS, AGAIN AT PAGE 8, THAT HE "MOVED THE VAST MAJORITY OF THIRD-PARTY TRAFFIC THAT AT&T WAS DELIVERING TO C SPIRE OVER THE INTERCONNECTION FACILITIES TO INTELLIQUENT, INC. (ANOTHER TRANSPORT PROVIDER). WHAT IS YOUR RESPONSE?

A. As an initial matter, I believe he misspoke. C Spire has no say in how AT&T delivers traffic to C Spire. I assume he meant to say C Spire has moved traffic it delivers to AT&T. Decisions about how C Spire delivers traffic to AT&T are C Spire's to make.

He does not testify about when C Spire moved (or will move) its traffic to Intelliquent, but AT&T certainly has no objection to it. If it results in total traffic over the shared facilities going down, such that the AT&T Local traffic becomes a higher

percentage of the total traffic (*i.e.*, the shared facility factor would increase) AT&T will continue to pay its share based on the adjusted shared facility factor. The numbers are what they are, and AT&T will pay its share based on the numbers.

Indeed, that is exactly the result AT&T is seeking in the case – it wants to pay its portion of the shared facilities based on whatever the shared facilities factor dictates that payment should be. That means, for January 2016, through September 2017, AT&T is owed a refund of $234,104 ($138,060 of which AT&T has already collected through withholdings.)

Q. MR. PUCKETT CLAIMS, AT PAGE 5, THAT "C SPIRE CORRECTLY BILLED AT&T FOR AT&T'S SHARE OF THE COST OF THE INTERCONNECTION FACILITIES IN ACCORDANCE WITH THE [INTERCONNECTION] AGREEMENT." WHAT IS AT&T'S RESPONSE?

A. AT&T vehemently disagrees that the bills were "correct." That is the very crux of this proceeding. As shown on Chart 1 in my Direct Testimony, C Spire billed AT&T the same 40.21% shared facility factor for the entire period January 2016 through September 2017, even though C Spire knew (and had information to confirm) that the actual factors were much lower. Mr. Puckett points out (at p. 5) that the parties executed a letter agreement dated August 4, 2007[2], saying AT&T would provide C Spire with quarterly shared facility factors, but that AT&T did not do so. But agreements go both ways. When AT&T mistakenly stopped providing updates as a result of internal personnel changes, C Spire could have sought updated factors from AT&T pursuant to the letter agreement and the ICA – and to be frank, C Spire undoubtedly would have done so had the updated factors inured to its benefit (that is, if the updated factors had resulted in AT&T Tennessee owing

[2] S*ee* Mr. Puckett's Exhibit C. The Letter Agreement is dated 2007, but the fax cover accompanying it and the BellSouth signature say 2006.

more to C Spire). As things turned out, the updated factors resulted in AT&T Tennessee owing less to C Spire, C Spire knew this (or, as is clear from Mr. Puckett's Direct Testimony, C Spire had access to information from which it should have known this), and C Spire remained silent, undoubtedly seeing an opportunity to take advantage of the situation and keep collecting more from AT&T than it should.

Once AT&T realized what was happening and provided the correct shared facility factors, C Spire again had an opportunity to do the right thing and correct its prior billing to reflect the actual shared facility factors. But instead, it began conjuring up arguments for why it should be allowed retain the windfall it had wrongfully over-collected.

But that is not what is allowed under the ICA that this Commission approved. If billing can be corrected based on actual information, then those corrections should be made. Nothing in the Commission-approved ICA suggests that the Commission cannot – or should not – require C Spire to do what clearly is just, equitable, and fair under these circumstances.

Q. MR. PUCKET ASSERTS AT PAGE 3 THAT AT&T IS SEEKING REFUNDS AS FAR BACK AS THE STATUTE OF LIMITATIONS ALLOWS. IS HE CORRECT?

A. No. As I explain in my Direct, my legal counsel advises that the Tennessee statute of limitations is six (6) years. AT&T's claim in the case goes back only to 2016. If AT&T still had in its records shared facility factors going back before 2016, it would be seeking additional refunds in an amount I estimated at $215,000 for the period going back to 2013. Thus, even if the Commission rules in AT&T's favor, C Spire will still enjoy an unwarranted windfall of more than $200,000 for shared facility charges it never should have billed, and that AT&T never should have paid.

Q. AT PAGE 4 MR. PUCKETT ARGUES THAT THIS CASE SHOULD BE DECIDED BY THE MISSISSIPPI PUBLIC SERVICE COMMISSION. IS THERE ANY MERIT TO THAT ARGUMENT?

A. Again, I am not an attorney, but in my years of experience involving ICAs approved by state commissions pursuant to the federal Telecommunications Act of 1996, I am not aware of any circumstances in which one state commission has ceded to another state commission the ability to interpret and apply how an ICA that the first commission has reviewed and approved applies in that state. At bottom, Mr. Puckett is suggesting that either party to the ICA can unilaterally choose which state Commission can decide what the ICA means across *all* states to which it applies simply by bringing a complaint in the state of its choosing. That suggestion that is not supported by either the language of the ICA or by the federal Telecommunications Act of 1996, and it is just silly. Beyond that, as I understand it, this issue was resolved when, on March 27, 2020, the Hearing Officer denied C Spire's *Motion to Dismiss*, finding that ". . . the Commission clearly has jurisdiction over the AT&T Complaint." *Order Denying Motion to Dismiss*, at 3.

Q. MR. PUCKET ARGUES AT PAGE 6 THAT C SPIRE WAS ENTITLED UNDER ICA SECTION VI.A.4.a TO BILL AT&T USING "THE PRIOR MONTH'S UNDISPUTED LOCAL TRAFFIC USAGE." HOW DO YOU RESPOND?

A. I addressed that point in my Direct Testimony. As I explained there, the argument fails for three reasons. (1) the ICA allows C Spire to ask for actual shared facility factors, and it never did so; (2) nothing in the Interconnection Agreement precluded AT&T from providing C Spire with actual shared facility factors for the period at issue, and (3) once AT&T provided C Spire with the actual shared facility factors, it became clear that the factors C Spire used for the period at issue were not "undisputed."

Now that I have seen Mr. Puckett's testimony, I now know there is also a fourth reason. As discussed above, C Spire was able to calculate the shared facility factors on its own but did not do so because it knew it would reduce its revenues.

Q. AT PAGE 7 MR. PUCKETT ARGUES THE INTERCONNECTION AGREEMENT, AT SECTION VI.B.5, PRECLUDES BILLING OF CHARGES MORE THAN ONE YEAR OLD. IS THAT A VALID POINT?

A. No, because that section simply does not apply to this dispute. C Spire issued timely bills, and AT&T paid them. The issue in this case is not whether the bills were timely, but whether they were accurate. As is clear from my testimony, C Spire's bills were not accurate, and nothing in the Interconnection Agreement (or Tennessee law) precludes AT&T from asking to have them corrected or precludes this Commission from correcting them if C Spire will not.

Q. **MR. PUCKETT ALLEGES AN APRIL 5, 2018 LETTER FROM AT&T EMPLOYEE DEBBIE WEBER NECESSARILY LIMITS AT&T'S CLAIM TO ONE YEAR. IS THAT LETTER RELEVANT?**

A. No. Ms. Weber is not an attorney and should not have been providing legal interpretations of the ICA without consulting with the AT&T Legal Department, which she did not do before sending the April 5 letter. As is obvious from all the other correspondence and legal pleadings exchanged in this case, AT&T's position is as presented in AT&T's Complaint and as I discussed above and in my Direct Testimony – nothing in the Interconnection Agreement or in Tennessee law precludes AT&T from seeking reimbursement of C Spire's overcharges for the period at issue – January 2016 through September 2017.

Q. MR. PUCKETT CLAIMS AT FOOTNOTE 9 THAT AT&T EMPLOYEE G.W. HODGES TOLD MR. PUCKETT IN 2013 THAT C SPIRE COULD CONTINUE USING THE 40.21% SHARED FACILITY FACTOR IN PERPETUITY. IS THAT ACCURATE?

A. Factually, I will defer to Mr. Hodges' Rebuttal Testimony. As a policy matter, the argument is absurd on its face. C Spire had an agreement with AT&T obligating AT&T to provide shared facility factors each quarter. The only thing Mr. Hodges told Mr. Puckett was that C Spire could use a prior quarter's factor *one time only* when AT&T was updating its computer systems and the then-current quarter's factor was not yet available. Mr. Puckett is stretching credulity well beyond its limits to suggest that C Spire was given blanket authority to keep using the 40.21% factor forever. Hoping it is so does not make it so.

Q. PLEASE SUMMARIZE AT&T'S CLAIM IN THIS CASE.

A. The central issue is whether the ICA permits either party to use *actual* shared facility factors to ensure billing is based on *actual* data. It does. Nothing in the ICA or in Tennessee law limits AT&T's ability to request corrected billing and refunds. AT&T has provided C Spire with actual shared facility factors which prove C Spire overbilled AT&T $234,104 from January 2016 through September 2017. If AT&T has retained shared facility factors for 2013 to 2015, its claim would have been some $215,000 more. C-Spire knew its reliance on a 2012 shared facility factor meant it was overbilling AT&T, but it continued to use it, never asking AT&T for updated factors, hoping to continue collecting money to which it was not entitled.

C Spire should be directed to refund to AT&T $96,044 (the amount AT&T overpaid in Tennessee that has not yet been refunded) and stop any further action to collect the $138,060 AT&T already withheld to recoup a portion of its Tennessee overpayments.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes, it does.