IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:	)	
	)	
AT&T Tennessee Complaint Against	)	**DOCKET NO. 19-00099**
Cellular South, Inc. d/b/a C Spire	)	

REPLY TO AT&T'S MOTION FOR SUMMARY JUDGMENT

BellSouth Telecommunications, LLC d/b/a AT&T Tennessee ("AT&T") has moved for summary judgment against Cellular South, Inc., d/b/a C Spire ("C Spire"") in the above-captioned Complaint.

I.

AT&T's Motion does not discuss the legal standard for granting summary judgment. As the Tennessee Court of Appeals wrote two weeks ago, summary judgment can "only" be granted when "there is no genuine issue as to any material fact." If matters are in dispute, the trial court must hear the evidence before making a decision. "Importantly," it is "not the trial court's function to weigh the evidence and determine the truth of the matter involved" at the summary judgment stage. Cora Beth Rhody v. June E. Rhody, 2020 WL 1891177, at 2-3 (Tenn. Ct. App. April 16, 2020) (internal citations omitted).

As the pre-filed testimony of the parties makes clear, there are multiple, disputed issues of fact in this case. In short, neither party believes the testimony of the other.

In his Rebuttal Testimony, C Spire witness Lee Puckett describes (at 2-3) a "disturbing allegation" made by AT&T witness Scott McPhee that is "patently false." Again (at 4), Mr. Puckett charges (at 5) that another statement by Mr. McPhee is "patently false." Asked if he believes three other statements made by Mr. McPhee, Mr. Puckett testifies (at 7-8), "No . . . no . . . [and] no."

In rebuttal (at 2), Mr. McPhee similarly describes Mr. Puckett's testimony as, "simply wrong . . . clearly is wrong . . . clearly wrong . . . [and] simply wrong."

The parties not only disagree on the facts but on the meaning of terms in the parties' interconnection agreement. See, for example, Mr. Puckett's discussion of the "PLU" factor (Direct Testimony at 7; Rebuttal Testimony at 5-6) and Mr. McPhee's different explanation of that same factor (Rebuttal Testimony at 3-4).

AT&T's Motion, like the utility's Complaint, presumes that AT&T's four-year-old calculations of the amounts owed to AT&T are accurate, even though C Spire has challenged those calculations and the underlying data to support (or rebut) those calculations was deleted by AT&T after AT&T began this dispute. In the Motion, AT&T simply repeats its version of the case, relying on the validity of its calculations, and then asserts (at 2), "C Spire witness Lee Puckett does not, and cannot, dispute these facts." But Mr. Puckett does dispute them as his testimony makes very clear.

In sum, this case can hardly be characterized as one in which there is "no genuine issue of material fact." There are, to the contrary, many disputed issues that the Hearing Officer will have to resolve following a hearing. Under Tennessee law, those issues cannot be resolved through summary judgment.

AT&T's motion must be denied.

II.

Since AT&T's Summary Judgment Motion must be denied because of all the disputed issues of fact, there is no reason for the Hearing Officer to rule at this time on AT&T's argument that despite the language in the interconnection agreement prohibiting retroactive billing beyond twelve months, AT&T has the right to back bill for up to six years,

constrained only by Tennessee's statute of limitations. Although this issue, if still relevant, should be more fully addressed in post-hearing briefs, C Spire offers now this short response.

In the Motion for Summary Judgment (at 2-3), AT&T argues that the language in the interconnection agreement on back billing (Section VI.B.5) applies only in circumstances where one party has failed to send a bill to the other but does not apply where one party has billed the other too much or too little. Over billing or under billing can be corrected, according to AT&T, up to six years after an erroneous bill is issued.

AT&T's argument is nonsensical. The self-evident purpose of a contractual limit on back billing is to (1) give each party reasonable assurance that the "books are closed" after a certain period of time and (2) provide guidance as to how long a party should retain its billing records. Both of these purposes are eviscerated by AT&T's claimed right to ignore the contract language and recalculate bills for up to six years.

Other provisions of the interconnection agreement and AT&T's own retention policies are inconsistent with AT&T's back-billing argument. The audit provision of the interconnection agreement (Section XV) requires parties to "maintain records of call detail for a minimum of nine months." Consistent with that provision, the results of an audit \may only be applied to "the quarter the audit was completed, the usage for the quarter prior to completion of the audit [ie., a maximum of eight months in the past] and to the usage for the two quarters following the completion of the audit." Id. What would be the purpose of requiring parties to retain records for only nine months and limiting the retroactive application of the results of an audit to a maximum of eight months if AT&T can unilaterally recalculate bills for up to six years without even doing an audit? Moreover, AT&T itself "retains traffic information for a rolling two-year period" and acknowledged that, "given the dispute between the parties," AT&T retained the

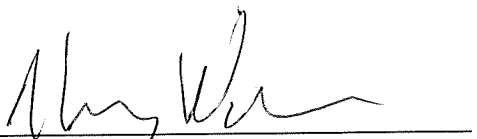
quarterly "shared facility factors" (but not the underlying traffic data) for C Spire going back only to January, 2016. AT&T Response to Discovery Request No. 1; Rebuttal testimony of Scott McPhee at 12. If AT&T believes that it has the right to recalculate bills for up to six years or, as Mr. McPhee testified, all the way back to 2013, why does the company routinely delete its traffic data after two years and why, despite initiating this billing dispute in October, 2017, did AT&T not keep records of the shared facility factors prior to January, 2016?

The point, of course, is that AT&T knows better. When AT&T initiated this dispute in October, 2017, AT&T back billed C Spire for one year. As the company explained in a letter written in April, 2018, "According to section VI.B.5, I have the right to go back for one year from the time the charges were incurred." Letter from Debbie Wilson to Lee Puckett, April 5, 2018. After getting a letter from C Spire rejecting AT&T's dispute and demanding to see the underlying traffic data, AT&T changed its position. Four days after the April 5 letter and six months after the dispute arose, Ms. Wilson wrote, "Upon review of the Interconnection Agreement, it appears the ICA is silent on back-billing terms." Letter from Debbie Wilson to Lee Puckett, April 9, 2018.

The interconnection agreement is not "silent on back-billing terms," and AT&T's revised position is a transparent fiction.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of April, 2020, a copy of the foregoing document was served on the parties of record, via electronic email transmission and regular U.S. Mail, postage prepaid, addressed as follows:

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