

to be another carrier or an entity that is not purchasing retail service. Thus, AT&T's terms prohibit WCX from using interconnection to support a wholesale service by making its service available for resale.

**Where it shows up:** GTC §§1.10, 1.23, 1.34, 1.45, 1.46, 1.69, 1.74, 1.80, 1.81, 2.9.1, 2.12.1.2, 3.2, 3.3, 10.1.3, 12.3, 12.4, 14.2, 14.3, 14.4.1, 14.4.1.1, 14.4.1.2, 14.4.1.2.1, 14.5, 14.5.2, 23.1, 23.2, 23.3, 23.3.1, 26.3.2, 30.3, 30.5, 32.2, 32.5, 32.6, 32.7, 33.2, 34.1, NIM §3.1, 3.2, ITR 3.5.1.1, 3.5.2, 3.5.2.1, 8.3.4.3, Compensation §3.2.1.

1.36 "Equal Access Trunk Group" means a trunk used solely to deliver Carrier's customers' traffic through an AT&T access tandem to or from an IXC, using Feature Group D protocols.

**What it means:** AT&T's terms require WCX to have Equal Access Trunk Groups to an "Access Tandem" but the "Access Tandem" definition only contemplates connections with "LEC" End Offices and "IXCs." WCX is neither of those things. Thus WCX cannot comply. WCX has no obligation to provide "equal access" to IXCs, under §332(c)(8)<sup>46</sup> so there is no need to have any Equal Access Trunk Groups. WCX may choose to directly connect to AT&T's access tandem to receive access calls from IXCs, but it is not required to do so.

**Where it shows up:** ITR §§2.3, 2.4, 2.4.1, 8.2.1.

1.45 "InterMTA Traffic" means traffic to or from Carrier's network that originates in one MTA and terminates in another MTA (as determined by the geographic location of the cell site to which the mobile End User is connected).

**What it means:** This definition requires that every call involve an End User that is "mobile." There can be no fixed, and the Authorized traffic for this agreement can only

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<sup>46</sup> "A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services." AT&T wants the Commission to expressly blind itself to what §332 says and to not worry about "whether" the ICA imposes an obligation that §332 expressly says cannot be imposed. WCX submits that a reviewing court would find a Commission-imposed obligation to have equal access trunking is arbitrary and capricious, and in violation of §332(c)(8).

involve WCX retail End Users. Also, the call must be connected to a "Cell Site" as defined in 1.17, and therefore there must always be a "Cellular Phone."

Any traffic that does not meet these requirements cannot be "InterMTA Traffic" under the AT&T terms even though the calls would not be "IntraMTA Traffic" either. The traffic is excluded from coverage under the ICA. If WCX sends or receives any traffic that does not qualify under a definition, then it is outside the Scope of the ICA. AT&T can claim breach and cancel.

**Where it shows up:** GTC §§1.80, 1.81, ITR §§8.3.1.2, 8.3.2, 8.3.2.1.1, 8.3.4.4, Compensation §§2.3.1.4, 3.2.1.

1.46 "IntraMTA Traffic" means traffic which, at the beginning of the call, originates and terminates within the same MTA and is exchanged between the End User of AT&T TEXAS and CMRS provider End User.

**What it means:** In order to be "IntraMTA" the call must be between an AT&T "End User" and a WCX "End User." This definition therefore excludes calls to or from the end user of a WCX reseller, even when the ultimate end-points are physically in the same MTA. AT&T has purposefully changed the FCC's definition of "non-access" for CMRS contained in 51.701(b)(2)<sup>47</sup> by adding criteria not in the FCC's definition.

Any traffic that does not meet these requirements cannot be "IntraMTA Traffic" under the AT&T terms even though the calls would not be "InterMTA Traffic" either. The traffic is excluded from coverage under the ICA. If WCX sends or receives any traffic that does not qualify under a definition, then it is outside the Scope of the ICA. AT&T can claim breach and cancel.

**Where it shows up:** ITR §1.1, Compensation §§2.2, 2.3.1, 3.2.1.

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<sup>47</sup> "Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in §24.202(a) of this chapter."

1.51 "Local Calls" are Authorized Services Completed Calls that originate on either Party's network, that terminate on the other Party's network, that are exchanged directly between the Parties and that, at the beginning of the call, originate and terminate within the same MTA. "Local Calls" does not refer to the local calling area of either Party. In order to measure whether traffic comes within the definition of Local Calls, the Parties agree that the origination and termination point of the calls are as follows:

(a) For AT&T TEXAS, the origination or termination point of a call shall be the End Office Switch that serves, respectively, the calling or called party at the beginning of the call.

(b) For Carrier, the origination or termination point of a call shall be the Cell Site that serves, respectively, the calling or called party at the beginning of the call.

**What it means:** This definition adds a host of limitations to the FCC's definition of "non-access" for CMRS purposes in 51.701(b)(2). The call must be associated with an "Authorized Service" (the definition for which entirely excludes everything WCX does); it must be a "Completed Call" (an impossibility for WCX as explained above); it must be directly exchanged between the parties (thereby ruling out indirect interconnection, and directly contrary to the FCC's statement in *CAF* ¶1007 that calls using indirect interconnection, including through IXCs, are still non-access); and it requires that the call involve a "Cell Site." The result is wholly dissonant with the FCC's rules. There is no reason to have a "Local Calls" definition. Under the FCC rules a call is either "access" or "non-access." No further gloss or strategic exceptions or qualifications are necessary or appropriate.

**Where it shows up:** This definition is used in GTC §1.88, the definition of "Trunk." The rest of the agreement makes clear that only "Authorized Services" can be supported through Interconnection (NIM §1.2) and only "Authorized Services Local Calls" can go on any "Trunk." The express provision saying that only "Authorized Services Local Calls" go on a Trunk necessarily limits the scope of AT&T's terms to "Local Traffic" as defined, and as noted AT&T's definition of "Local Traffic" is far more restrictive than the

FCC's definition of "non-access" traffic for CMRS purposes. It is therefore inconsistent with the FCC's compensation rules. More significantly, however, it would unlawfully prohibit activity WCX is expressly allowed to conduct as a CMRS provider by precluding WCX from supporting what are clearly "interconnected services" under the FCC's Part 20 rules when it wants to exchange traffic with AT&T.

1.54 "MSC" ("Mobile Switching Center") means Carrier equipment used to route, transport and switch commercial mobile radio service traffic to, from and among its end users and to and from other Telecommunications Carriers.

**What it means:** An MSC can only be used to route traffic between "End Users" and other "End Users" and between "End Users" and other carriers. WCX's switching intelligence does these things, but also performs many more functions. This definition will outlaw WCX's ability to have a SIP core.

**Where it shows up:** GTC §§32.9.2, 32.10, Appendix 911 §§2.9, 4.1, 4.2.2, 4.2.3, 4.2.5, 4.2.8, 4.3.2.2, 5.1.

1.61 "OLI" ("Originating Line Information") is an SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling Party.

**What it means:** Another SS7-limited definition. SIP does not do OLI *per se*. The ISUP-OLI parameter information is part of the From: Header in the SIP INVITE message.

**Where it shows up:** GTC §33.2.

1.62 "Originating Landline to CMRS Switched Access Traffic" means traffic delivered directly from AT&T TEXAS' originating network to Carrier's network that, at the beginning of the call: (a) originates on AT&T TEXAS' network in one MTA; and, (b) is delivered to the Cellular Phone of Carrier's Customer connected to a Cell Site located in another MTA. AT&T TEXAS shall charge and Carrier shall pay AT&T TEXAS the Originating Landline to CMRS Switched Access Traffic rates in Appendix Pricing – Wireless.

**What it means:** Must be to a Cellular Phone "of Carrier's Customer," and must connect to a Cell Site. One must wonder what happens to an AT&T-originated interMTA call that

does not involve a "Cellular Phone," or does not go to a "Cellular Phone of WCX's Customer" (in other words it goes to a WCX reseller's end user), or does not traverse a "Cell Site" as defined. The call would still not be "non-access." But it would apparently not be access either. There is a gap. Actually there is not a gap. AT&T would contend such calls are simply not allowed, and thus if any occur there is a breach and AT&T can cancel the ICA.

**Where it shows up:** ITR §§8.3.4, 8.3.4.2, 8.3.4.3, 8.3.4.4.

1.66 "POI" ("Point of Interconnection") means, for direct interconnection purposes, the physical location at which the Parties' networks meet for the purpose of establishing Interconnection. POIs include a number of different technologies and technical interfaces based on the Parties mutual agreement. The POI locations on which they have agreed shall be recorded in writing for future reference.

**What it means:** Under this definition there cannot be a POI if indirect interconnection is used.

**Where it shows up:** NIM §§2.1, 2.1.2, 2.2, 3.3, 3.5.5, ITR §§3.2, 9.6.1.

1.71 "SS7" ("Signaling System 7") means a signaling protocol used by the CCS Network.

**What it means:** FCC Rule 64.1600(k) uses a different definition: "Signaling System 7. The term "Signaling System 7" (SS7) refers to a carrier to carrier out-of-band signaling network used for call routing, billing and management." There is no telling why AT&T wants a different definition. WCX would probably only become aware of the sinister intent behind the different wording after this agreement is in force and AT&T starts dragging its feet or wants to drum up an excuse to claim breach so it can cancel. As noted, however, WCX opposes SS7 interconnection because WCX does not have SS7 capabilities. WCX will use a third party intermediary for indirect interconnection. That intermediary will have SS7 capabilities. WCX's SIP-based call control signaling will be

converted to SS7 signaling by the intermediary using RFC 3398 and its related/successor standards.

**Where it shows up:** GTC §§1.16, 1.29, 1.61, 33.1, ITR §§3.5.2, 3.5.2.1, Appendix 911 §§2.13, 4.25, Compensation §4.2.

1.74 “Switched Access Services” means an offering of access to AT&T TEXAS’ network for the purpose of the origination or the termination of traffic from or to End Users in a given area pursuant to a Switched Access Services tariff.

Note: Appendix MPB also has a definition: For purposes of this Appendix, “Switched Access Services” means an offering to IXCs that allows access to the Parties’ networks for the purpose of the origination or the termination of traffic from or to IXCs in a given area pursuant to a Switched Access Services tariff for Feature Group B and/or Feature Group D arrangements.

AT&T’s purpose and intent for the differing definitions is a mystery. The GTC definition speaks to traffic to or from End Users. The MPB definition characterizes Switched Access as an offer to IXCs. Both are nominally true, but the purpose behind AT&T’s use of distinct language in one place and differing words in the other is completely unknown.

**What it means:** The GTC definition has the troublesome End User limitation built-in, and as noted a third party is only an End User if that party is a retail customer of WCX or AT&T. As a result, “switched access” cannot apply to an otherwise “access” call if an end user of a wholesale customer is involved. This creates yet another gap, or yet another way AT&T can claim breach and then cancel the ICA.

The MPB definition speaks to an offer to IXCs. While WCX can never be sure of AT&T’s ultimate purposes with the words it chooses, that definition does not appear, on its own, to be problematic.

**Where it shows up:** GTC §§1.5, 1.62, 1.81, 1.90, NIM §1.5, ITR §§5.4, 8.1, 8.3.1, 8.3.1.1, 8.3.1.2, 8.3.4, 8.3.4.2, 8.3.4.3, MPB §§1(a), 1(b), 2, 3, 4, 6.

1.75 "Tandem Switch" or "Tandem(s)" are AT&T TEXAS switches used to connect and switch trunk circuits between and among other Central Office Switches. A Tandem Switch does not include a PBX.

**What it means:** This definition says that only AT&T can have a Tandem, and it therefore serves to further limit the definition in 1.2, to make it clear that AT&T demands a monopoly on tandem related services and functionality. Last time WCX checked, however, there were a few other carriers in Texas that operated tandems as well. Further, under this definition WCX cannot in fact connect to AT&T's Tandem because WCX will not be operating a "Central Office Switch" as defined in 1.20. Yet AT&T's terms say that it must, because that is where Type 2A interconnection occurs and AT&T is proposing mandatory use of TDM-based Type 2A direct interconnection.

**Where it shows up:** The usage varies somewhat from the actual term in 1.75, but the essence is used in GTC §§1.2, 1.20, 1.36, 1.69, 6.6.7, 33.1, NIM §§1.5, 4.2, ITR §§2.2, 2.3, 2.4, 2.6, 3.2, 3.4.1, 3.5.1, 3.5.2.1, 4.2, 4.4, 6.1, 6.2, 6.2, 6.8, 8.2.1, 9.1.1, 9.6.1, 9.6.2, 9.6.3, 9.7.1.

1.80 "Terminating IntraLATA InterMTA Traffic" means traffic that, at the beginning of the call: (a) originates on Carrier's network and terminates in the same LATA; (b) is sent from the Cellular Phone of Carrier's End User connected to Carrier's Cell Site located in one MTA; and, (c) is terminated on AT&T TEXAS' network in another MTA. For such InterMTA IntraLATA Traffic, AT&T TEXAS shall charge and Carrier shall pay AT&T TEXAS the Terminating IntraLATA InterMTA Traffic rates in Appendix Pricing - Wireless.

**What it means:** Traffic that does not involve a "Cellular Phone" "of Carrier's End User" who is "connected to Carrier's Cell Site" does not qualify. Since the end-points are still in different MTAs, the call is access, and is not non-access. Yet another gap, and yet another carefully constructed "Authorized Service" limitation that will allow AT&T to claim breach and then cancel the ICA.

**Where it shows up:** ITR §§8.3.1.2, 8.3.2, 8.3.2.1.1.

1.81 "Terminating Switched Access Traffic" means traffic that, at the beginning of the call: (a) originates on Carrier's network; (b) is sent from the Cellular Phone of Carrier's End User or the Cellular Phone of a Third Party connected to a Cell Site located in one MTA and one LATA; and, (c) terminates on AT&T TEXAS' network in another MTA and another LATA (i.e., the traffic is both InterMTA and InterLATA). This traffic must be terminated to AT&T TEXAS as FGD terminating switched access per AT&T TEXAS' Federal and/or State Access Service tariff.

**What it means:** Interestingly, this definition is slightly broader than what is covered by GTC §1.80. There must still be a "Cellular Phone" but this time it can be one used by "Carrier's End User" "or of a Third Party." The "Cellular Phone" must still be "connected to a Cell Site" (so it need not necessarily be "Carrier's" Cell Site). WCX has no idea why the 1.81 is broader than 1.80. Nonetheless, if there is no "Cellular Phone" the call would be access, and not non-access, but there is no contract treatment. Yet another gap, and yet another carefully constructed "Authorized Service" limitation that will allow AT&T to claim breach and then cancel the ICA.

**Where it shows up:** ITR §§8.3.1.1, 8.3.1.2.

1.86 "Toll Free Service" means service provided with a dialing sequence that invokes toll-free (i.e., 800-like) service processing. Toll Free Service includes calls to the Toll Free Service 8YY NPA SAC Codes.

**What it means:** WCX has some suspicion that this definition has a relation to the 5YY issue. But it is not clear whether AT&T considers 5YY calls to be "Toll Free" or something else.

**Where it shows up:** This definition is not used anywhere in the rest of AT&T terms. The purpose for its inclusion is wholly unknown. We can be sure there is one, but AT&T's secret intent will more than likely not be revealed until after the agreement is approved and AT&T starts trying to cook up reasons to send a big bill and then demand escrow, with cancellation surely soon to follow.



1.88 "Trunk(s)" or "Trunk Group(s)" means the switch port interface(s) used and the communications path created to connect Carrier's network with AT&T TEXAS' network for the purpose of exchanging Authorized Services Local Calls for purposes of Interconnection.

**What it means:** This definition says that only "Authorized Services" "Local Calls" may be placed on the Trunks and Trunk Groups described in Appendix ITR, or handled by "switch port interfaces" used for Interconnection. If WCX places or receives a call that is not part of an "Authorized Service" and/or is not a "Local Call" (which according to 1.51 must be an Authorized Services Completed Call) then AT&T can claim breach and cancel the ICA. Further, in order for a call to be "IntraMTA" (and therefore non-access and bill and keep) the call must be "sent over Interconnection Trunks as described in Appendix ITR." Compensation §2.2. This means that if a call is not an "Authorized Services Local Call" it cannot be placed over an "Interconnection Trunk" and therefore cannot be "IntraMTA." The entire construct requires all Authorized traffic (but it can only be Authorized traffic) to traverse direct interconnection in order to be "non-access." This violates the FCC's ruling that indirect traffic that begins and ends in the same MTA is also non-access. CAF ¶1007. As soon as AT&T finds that WCX has sent or received any traffic that is not "Authorized" through a Trunk then AT&T will immediately claim breach and cancel.

**Where it shows up:** GTC §§1.9, 1.19, 1.31, 1.36, 1.75, 1.89, 6.6.6, 6.6.7, 9.4.4, 32.4, 32.7, 39.3, 39.4, NIM §§1.4, 1.6, 2.1, 3.5.1, 3.5.2, 3.5.3.1, 3.5.6.1, 3.5.6.2, Appendix 911 §§2.9, 2.13, 2.19, 2.20, 3.31, 4.2, 4.3.2.2, 8.2, Compensation §2.2. "ITR" stands for "Interconnection Trunking Requirements" and so there should be no surprise that the term appears in every single section of that Appendix.

1.89 "Trunk Side" refers to a Central Office Switch interface that offers those transmission and signaling features appropriate for the connection of switching

entities and cannot be used for the direct connection of ordinary telephone station sets.

**What it means:** This definition says that only a Central Office can have Trunk Side interfaces. WCX does not have a Central Office as defined in 1.20. Thus WCX cannot use the Trunk Side connections required in other parts of the AT&T terms.

**Where it shows up:** NIM §§1.4, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, Appendix 911 §2.19.

WCX simply wants calls to route. WCX must have routable numbers. AT&T insists that an agreement – and only AT&T's agreement – is an absolute prerequisite to routability. But there is a huge cost, in addition to the trouble and expense of TDM-based Type 2A direct interconnection. After all of the parsing is done, it becomes clear that AT&T's terms are purposefully written to prohibit WCX from providing a host of services to a number of customers. The numbers may begin route, but in the end there is not whole lot WCX can do with them under AT&T's terms.

The restrictive approach is so baked-in that it cannot be wholly identified, much less entirely removed. WCX has certainly not located each and every provision that imposes restrictions, but it is clear that AT&T's terms prohibit WCX from providing the following services and/or engaging in the following activity – even after WCX is forced to directly interconnect with AT&T using TDM.

- (a) “Machine to Machine” (“M2M”) devices as a CMRS provider.
- (b) CMRS services supported by a WCX Machine to Machine “Centralized Core” that is SIP enabled and provides interconnected services through the WCX Core.
  - (i) AT&T's terms prohibit M2M and prevent WCX from having a SIP core that supports interconnected services.

The definitions of “Cell Site,” “Cellular Phone,” “End User,” “interMTA Traffic,” “IntraMTA Traffic,” “MSC,” “Local Calls,” “Originating Landline to CMRS Switched

Access Traffic,” “Switched Access Services,” “Terminating IntraLATA InterMTA Traffic,” “Terminating Switched Access Traffic” and “Trunks” and then the way they are embedded and reinforced throughout the AT&T terms, in combination with the fourth Whereas clause, GTC §§2.12.1.2 and §38, operate to prohibit WCX from supporting M2M devices and services. WCX cannot use a SIP core to do so.

- An M2M device does not meet the definition of “Cellular Phone.”
- Communications between M2M devices and other edge devices on the PSTN may not always have a direct radio connection with WCX’s “Cell Site.”
- M2M devices will not necessarily be associated with a WCX “retail” End User purchaser of Telecommunications Service.
- The communications will not meet AT&T’s definition of “Authorized Services.”
- The communications will not be “Local Calls” even if both end-points are in the same MTA, and are originated or terminated by a CMRS provider (here, WCX).

(ii) WCX has the right to provide M2M, and “conditions” forcing WCX to suffer cancellation if it does are not eligible for arbitration.

The trade press is full of announcements regarding M2M and the revenue potential to CMRS providers from this new and exciting market. The FCC clearly believes CMRS providers can provide and support M2M devices and services, and is encouraging them to do so.<sup>48</sup>

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<sup>48</sup> See, *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Seventeenth Report, 29 FCC Rcd 15311, 15318, ¶13 (rel. Dec. 2014):

13. **All nationwide providers provide service directly to consumers and businesses**

WCX intends to enter this market and will – like all other CMRS providers – support M2M devices and services. The devices will be radio “stations” and most will also be “mobile stations” as defined in §153(34), although in some instances the design may be for a purely fixed application. WCX’s services that will support M2M devices and applications will be “interconnected” under the FCC’s definition in Rule 20.3 because they will have a traditional phone number for addressing purposes, will be able to engage in text messaging, and will have a VoLTE voice client which can communicate with WCX’s SIP core. They will be able to originate calls to the rest of the PSTN, and receive calls from the PSTN.

AT&T, however, is carefully attempting to prohibit WCX from being able to interconnect (either directly or indirectly) with AT&T and exchange ***interconnected service*** traffic associated with M2M devices. WCX has the right to provide interconnected service, and has the right to indirectly interconnect with AT&T so that can occur.

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**and also provide machine-to-machine (M2M) services.** Later in the Report, detailed data and analysis are provided on the retail voice and broadband service provided by these companies. However, there are limited statistics on M2M communications. The research firm “Current Analysis” estimates that AT&T had approximately 14.7 million M2M connections, Verizon Wireless had between 7 and 9 million connections, and both Sprint and T-Mobile had 3.3 million connections. M2M has gained significant interest in the past few years as providers continue to provide connectivity between devices, sensors, monitors, etc. and their networks. The new “Internet of Things” (IoT) is seen by some commentators as promising the next major opportunity for providing interconnection and advanced connect among devices. Many industries such as healthcare, are transforming to use M2M networks to connect their numerous smart devices and machines. While M2M resides mostly in the Enterprises space, more and more providers are launching services for the home market. (emphasis added)

(c) CMRS services using a WCX Voice “Centralized Core” that is SIP enabled and has the ability to provide interconnected services through its Core.

(i) AT&T’s terms prohibit or inhibit WCX’s ability to provide SIP-based VoLTE services through a centralized core.

Once again the definitions of “Cell Site,” “Cellular Phone,” “End User,” “InterMTA Traffic,” “IntraMTA Traffic,” “MSC,” “Local Calls,” “Originating Landline to CMRS Switched Access Traffic,” “Switched Access Services,” “Terminating IntraLATA InterMTA Traffic,” “Terminating Switched Access Traffic” and “Trunks” and then the way they are embedded and reinforced throughout the AT&T terms, in combination with the fourth Whereas clause, GTC §§2.12.1.2 and §38, operate to prohibit WCX from using its IP-based network to support VoLTE (which is SIP-based) if and to the extent WCX wants to exchange traffic with AT&T. AT&T’s terms basically outlaw IP-based services, VoLTE, SIP and the use of a new technology core (rather than a legacy big-iron switch) to provide services. They do it on purpose, and with malevolent intent.

(ii) WCX has the right to have an IP-based network that supports VoLTE through a SIP core, and “conditions” forcing WCX to suffer cancellation if it does are not eligible for arbitration.

This should be obvious to all except AT&T. The entire industry (except AT&T Texas) is moving to IP networks and IP-based services. CAF was almost entirely focused on accelerating the transition to broadband and IP. WCX would be wasting its funds building a TDM, circuit-switched network. But that is what AT&T is attempting to require. Anything IP, SIP/VoLTE and supported through a core rather than a traditional legacy “MSC” is ineligible for traffic exchange. WCX will be immediately in breach as soon as it actually uses interconnection. AT&T will very quickly exercise the right to cancel.

(d) Fixed wireless services as a CMRS provider.

(i) AT&T's terms exclude fixed service even though it is CMRS.

AT&T's terms require that all traffic be associated with a "Cellular Phone" and part of an "Authorized Services Local Call," among other things. Several tightly integrated and inseverable definitions are repeatedly applied throughout the AT&T terms. In short, AT&T's terms require that the station be mobile and of a certain type. If the station does not meet the strict criteria the call cannot be handed through interconnection. If a call that is not "Authorized" does get exchanged then AT&T can claim breach and cancel because of the fourth Whereas clause and GTC §§2.12.1.2 and §38. *See also* GTC §4.3.

(ii) WCX has the right to provide fixed service on a CMRS basis, and "conditions" forcing WCX to suffer cancellation if it does are not eligible for arbitration.

CMRS providers have the right to provide fixed wireless service on a co-primary basis.<sup>49</sup> When they do so the service is still CMRS, and the CMRS rules still apply. This Commission could not lawfully prohibit WCX from providing fixed wireless and supporting its interconnected services by receiving calls originated by AT&T, or sending calls to AT&T in this arbitration, nor could the PUC exclude that traffic from coverage in any ICA or hold that WCX's fixed wireless traffic is not subject to the intraMTA rule.<sup>50</sup>

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<sup>49</sup> See *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1424, ¶36 (1994); *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8965, 8968, ¶69 (1996) ("*CMRS Flex First Report and Order*") (holding that mobile or fixed incidental services offered by CMRS carriers fall within the definition of mobile service and are subject to CMRS regulation).

<sup>50</sup> Rule 51.701(b)(2) says that the intraMTA rule applies to "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area." The rule speaks to traffic to or from "a CMRS provider" not to or from a "mobile station." Therefore, when WCX provides fixed service and is acting as a CMRS provider then the associated traffic is subject

(e) “Wi-Fi off-load” for WCX interconnected services as a CMRS provider.

(i) AT&T’s terms prohibit off-load.

The tightly woven definitions all require that the “Cellular Phone” connect to the “Cell Site.” Thus a call to or from a mobile station running WCX’s VoLTE client that connects to a Wi-Fi router, which is in turn connected to the cell site (or perhaps to some other broadband network) would be a breach, and AT&T could cancel the ICA. Further, AT&T’s terms very carefully exclude such calls from being either “access” or “non-access.” There is no compensation treatment at all since the terms assume these calls will not occur, and prohibit them from occurring.

(ii) WCX has the right to support offload, and “conditions” forcing WCX to suffer cancellation if it does are not eligible for arbitration.

Virtually every CMRS provider supports offload. Most have an option for “Wi-Fi Calling.” They do so to increase coverage and (for some) to reduce total subscriber charges.<sup>51</sup> AT&T Mobility is taking that step this year.<sup>52</sup> WCX, like all other CMRS providers, has the right to provide and support this option. Neither AT&T nor this Commission can ban WCX from engaging in this activity, or prohibit WCX from using an interconnection arrangement to do so.

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to the intraMTA rule.

<sup>51</sup> *Wireless Competition Seventeenth Report*, 29 FCC Rcd at 15365, ¶108, n. 226.

<sup>52</sup> CNET, “AT&T plans to offer Wi-Fi calling in 2015,” Roger Cheng (September 12, 2014), available at <http://www.cnet.com/news/at-t-plans-to-offer-wi-fi-calling-in-2015/>.

(f) Services that leverage strategic relationships with network and manufacturing partners of WCX's products and services.

(i) AT&T's terms functionally prohibit WCX from partnering.

Buried in AT&T's definitions and terms is a functional prohibition against partnering with network and manufacturing partners. The AT&T terms prohibit resale, and AT&T would likely view a partnering arrangement as a form of resale, especially if the partner is the one responsible for interacting with end users. The AT&T terms require that the "network" always be WCX's network, and all communications must always involve a direct radio link between a WCX retail End User's "Cellular Phone" and a WCX "Cell Site." These onerous restrictions are particularly harmful for a relatively new entrant attempting to expand and amplify services and trying to conserve resources and attract strategic and capital funds.

(ii) WCX has the right to partner with others, and "conditions" forcing WCX to suffer cancellation if it does are not eligible for arbitration.

There is no basis in the FCC's rules for AT&T's "no partnering" requirements. WCX has every right to engage in strategic and operational partnerships that will accelerate and improve deployment and service delivery. AT&T's efforts to straight-jacket WCX in order to slow or stop market entry and expansion are unreasonable and unlawful. The PUC certainly has no legal right or justification for so intruding in WCX's business methods. The restrictions are so limiting they constitute entry/exit regulation, and an attempt at the state level to regulate a CMRS carrier in the guise of fulfilling §§251/252 responsibilities and duties. The FCC has made it quite plain that is not allowed.



(g) Services to resellers of WCX's services, such as MVNOs or other entities.

(i) AT&T's terms provide that WCX cannot allow resale.

NIM §3.1 expressly provides that the "final destination" for all calls from AT&T's network to WCX's network must be to a WCX retail "End User." NIM §3.2 expressly provides that "mobile-to-land traffic delivered from Carrier to AT&T TEXAS must be from Carrier's End Users." The entire agreement is riddled with terms that have the "End User" condition. Therefore, the ICA will support only traffic to and from WCX's retail end users. All other traffic is excluded, and thus prohibited under GTC §2.12.1.2 and §38, as is evident from the fourth Whereas clause. If WCX were to use interconnection to support a reseller, who in turn had the retail end user, AT&T could claim breach and cancel.

(ii) WCX has the right to allow resale of its service, and "conditions" forcing WCX to suffer cancellation if it does are not eligible for arbitration.

WCX can provide services for resale, just like AT&T Mobility, Verizon, Sprint and T-Mobile.<sup>53</sup> The Act encourages resale. Sprint and T-Mobile have entire divisions dedicated to resale to "MVNO" operators. AT&T, however, would deny this opportunity to WCX. As explained above, AT&T's terms would likely also treat at least some potential strategic partnerships as a form of prohibited resale. Neither AT&T nor this Commission can prohibit WCX from selling its services for resale. The FCC's *TWC Declaratory Ruling* directly holds that a carrier can obtain direct or indirect interconnection in order to provide wholesale service.

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<sup>53</sup> FCC Rule 20.12(b) has expired, so WCX is not *required* to allow resale. But it is certainly encouraged and able to allow resale.

(h) Voice or other services using new technology, especially if they involve multiple network technologies, including but not limited to light-licensed and unlicensed radio frequencies, to connect and service WCX supported devices.

(i) AT&T's terms prohibit new technology including use of multiple network technologies.

AT&T's terms basically require WCX to do things the way things were done back when wireless was analog and TDM. Mobile stations were the size of a brick and could only make and receive phone calls. The definitions prohibit use of IP-based technologies and devices, and do not allow WCX to use Wi-Fi, small cell or DAS as a means of service delivery. New and different business models are prohibited. The AT&T terms impose a stifling and crippling straight-jacket for wholly impermissible and anti-competitive reasons. This is not about "how much"; it is entirely a "whether."

(ii) WCX has the right to employ new technology and multiple network mechanisms, and "conditions" forcing WCX to suffer cancellation if it does are not eligible for arbitration.

ICAs cannot lawfully serve as a vehicle for regulation of a CMRS provider by the ILEC or the state commission. WCX has the right to implement and use new technology in order to provide innovative and cutting edge CMRS interconnected services to its users. WCX has the right to use interconnection to provide interconnected service. AT&T's restrictions are flatly illegal.

(i) 5YY non-geographic services supported through interconnection with AT&T.

(i) AT&T's terms prohibit 5YY as part of the ICA.

AT&T's Position Statement on WCX Issue 5 (AT&T Response p. 120) asserts that WCX must purchase AT&T's access tariffed ACIS "service" in order to have AT&T perform switch translations and start routing calls from its users to WCX users that have

a 5YY number. AT&T claims that the tariff controls and the Commission cannot determine that the tariff either does not or should not apply to the extent that 5YY will involve non-access traffic exchange between WCX and AT&T. AT&T will not perform the translations or route non-access 5YY calls originating on AT&T's network unless WCX pays money and subscribes to the access tariff.

The FCC's rules do not allow AT&T's desired result. Rules 20.11(d) and 51.703(b) prohibit LECs from imposing tariffed charges on the originating non-access traffic. AT&T cannot just refuse to perform translations at its whim. When WCX uses 5YY resources to support non-access calls, AT&T cannot be allowed to say its tariff controls over FCC rules, and refuse to perform the requisite translations and then route.

WCX is "authorized" to provide interconnected CMRS service. 5YY can be part of an interconnected CMRS service. AT&T's effort to deem a particular service "unauthorized" and ban WCX from providing interconnected service must be rejected.

\* \* \*

Under AT&T's terms WCX will be prohibited from providing services it has the federal right to provide, because AT&T has relegated to itself the sole discretion to decide if something is or should be an "Authorized Service." AT&T's terms themselves either rule them out expressly, or they are for one or more reasons not "ruled in." Anything not expressly "ruled in" is expressly "ruled out" under GTC §2.12.1.2<sup>54</sup> and Section 38, Scope of Agreement. GTC §2.12.1.2 expressly rules out traffic that is not

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<sup>54</sup> "2.12.1.2 This Agreement is solely for the exchange of, and applies only to, Authorized Services traffic that either (a) is delivered by AT&T TEXAS in Time Division Multiplexing ('TDM') to Worldcall's wireless network for termination by Worldcall to its End Users; or (b) originates through wireless transmitting and receiving facilities and that Worldcall delivers to AT&T TEXAS in TDM format. For purposes of subsection (b) above, CMRS traffic that is originated by a Worldcall End User will be deemed to be originated through wireless transmitting and receiving facilities."

exchanged in TDM, and traffic that does not go to, or come from, a WCX "End User." Under AT&T's contract everything that is not mandatory is prohibited, because if it is not "ruled in" it is not an "Authorized Service," is not within the Scope of the Agreement, and is ruled out by GTC §2.12.1.2 and the fourth Whereas clause.

WCX has the clear legal right to provide these services and engage in each of these activities. This Commission cannot consider, much less approve, terms that would prohibit them, render them practically infeasible, limit them or regulate them. AT&T's terms ask the Commission to engage in state regulation of CMRS entry, "through the exercise of states' sections 251/252 authority or otherwise." AT&T's terms would "impose on CMRS carriers rate and entry regulation as a pre-condition to participation in interconnection agreements that may be negotiated and arbitrated pursuant to sections 251 and 252." *Local Competition Order* ¶1025. They are simply not eligible for arbitration.

4. AT&T's terms cannot be edited or changed so all offensive provisions are removed.

AT&T's unlawful attempt to have the Commission pervasively regulate WCX and prohibit entry by providing federally-allowed services is "baked in" to the entire agreement. The restrictions and prohibitions and limitations appear in the definitions and then in virtually every section and sub-section of the agreement. This thing cannot be repaired or edited to remove the unlawful effects. That was precisely AT&T's intent. Other provisions are horrendously vague. AT&T will have every incentive to later claim that WCX has done something AT&T deems to be a violation of some provision with hidden meaning known only to AT&T. AT&T will cancel the agreement and force WCX

to come back to the Commission for relief. There is simply no way to “fix” this agreement. It is so pervasively unlawful and vague that it cannot be considered.

**D. Threshold Issue 3: Is WCX entitled to request consideration of its motion for interim relief?**

AT&T Response p. 26 contends that WCX is not eligible for interim transport and termination terms under Rule 51.715<sup>55</sup> “for four separate reasons.” WCX will demonstrate each of AT&T’s excuses fail, by responding to each in the order presented.

1. “WCX already has an existing arrangement that provides for the transport and termination of Non-Access Telecommunications Traffic by AT&T Texas.”

AT&T says that since WCX has a means to get traffic to AT&T there is an “existing arrangement.” This contention fails all logic and is not consistent with the clear meaning of “arrangement.” WCX has had to port individual numbers to a CLEC. Calls from WCX users to AT&T users appear as if they came from the CLEC. The **CLEC** is the one with the arrangement, not WCX. The ploy WCX used to avoid AT&T’s blocking maneuvers cannot be called an “arrangement” with AT&T. Both parties agree that there is no “interconnection agreement” between WCX and AT&T. There are no **written** transport and termination/reciprocal compensation terms between WCX and AT&T. The

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<sup>55</sup> Rule 51.715 provides, in pertinent part:

§ 51.715 Interim transport and termination pricing.

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of Non-Access Telecommunications Traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

(1) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of Non-Access Telecommunications Traffic by the incumbent LEC.

(2) A telecommunications carrier may take advantage of such an interim arrangement only after it has requested negotiation with the incumbent LEC pursuant to § 51.301.

(b) Upon receipt of a request as described in paragraph (a) of this section, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of Non-Access Telecommunications Traffic at symmetrical rates.

traffic coming from WCX, through the CLEC and then to AT&T is being treated like wireline traffic, which means that calls from a WCX user to an AT&T user that is in the same MTA but not the same wireline local calling area is subject to access treatment. The traffic from AT&T users addressed to the former WCX number that was ported to the CLEC goes from AT&T to the CLEC and then WCX. This is indirect interconnection, to be sure. But the calls are rated as access if the call is in the same MTA but between two wireline calling areas. Thus, contrary to AT&T's argument, the alleged "arrangement"<sup>56</sup> **does not result in** "the incumbent LEC [] provid[ing] transport and termination of Non-Access Telecommunications Traffic." See 51.715(a). AT&T is forcing access treatment for non-access traffic. It is not treated like the non-access traffic that it is.

AT&T assigns a very casual meaning to the term "arrangement." The FCC's discussion in *Local Competition Order* ¶¶1065-1068 makes it relatively clear that the FCC intended a far more formal understanding, one that is in writing and fully enforceable. WCX invites the Arbitrators to search for every place where the FCC used the term "arrangement" in the *Local Competition Order*. In every contextually relevant instance the "arrangement" being addressed was formal, and usually covered by a binding written set of terms. To pick just the first several, see the usage in *Local Competition Order* ¶¶13, 14, 21, 22, 29, 34 and 72.

Formality is essential to any "arrangement." WCX has no means by which to "enforce" the "arrangement" AT&T says exists as between AT&T and WCX. AT&T could conceivably choose today to start blocking all calls. There is no possibility of "true-up"

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<sup>56</sup> It is not an "arrangement" in the sense of the intent of the rule as shown below.

either. Access is being billed and paid at the present time for much of the traffic going in each direction, yet WCX does not see AT&T volunteering to refund that money once we have CAF-compliant bill and keep terms. AT&T's Response is noticeably silent on how or whether there will be a "true-up" at the end. WCX has every reason to suspect AT&T will not be sending any checks to anyone.

WCX is the carrier described in *Local Competition Order* ¶1065. WCX is "a new entrant that has already constructed facilities." WCX has "a relatively weak bargaining position." WCX has had to choose whether "to accept transport and termination rates not in accord with these rules or to delay its commencement of service until the conclusion of the arbitration and state approval process." WCX can provide some services, but they are hobbled, and WCX has been denied the ability to fully enter the market because AT&T is blocking and refuses to not block. "[T]he purpose of this interim termination requirement is to permit parties without existing interconnection agreements to enter the market expeditiously." *Local Competition Order* ¶1065 (emphasis added).

AT&T's notion that since WCX can get traffic to AT&T it has an "arrangement" is entirely inconsistent with the FCC's action in the *T-Mobile Declaratory Ruling*. In that case the CMRS providers were delivering traffic to the ILECs, but there was no written agreement. Under AT&T's theory there would have been an "existing arrangement" between the CMRS providers and the RLECs because traffic was flowing and the ILECs were transporting and terminating. Yet the FCC expressly held that the ILECs could deliver a request for negotiations to the CMRS provider and immediately obtain "interim transport and termination" terms. *T-Mobile Declaratory Ruling*, 20 FCC Rcd at 4864-

4865, ¶16. This is a specific example of a situation where there was a pre-existing “arrangement” that would have disqualified the ILECs from 51.715 eligibility under AT&T’s theory. Yet the FCC expressly held that 51.715 would be available. “Interim compensation requirements are necessary for all the reasons the Commission articulated in *Local Competition First Report and Order*.” So it is in our case as well. An interim arrangement is necessary, and required by the rules.

*Autotel*<sup>57</sup> is not on point. In fact, it supports WCX’s position. Autotel had a tariff arrangement with Nevada Bell. This is, of course, a formal written document that is binding. It is, in effect, a contractual agreement. WCX is not buying from any AT&T tariff. Instead, WCX is “relying on intermediary networks” in order to be “able to exchange telecommunications traffic with incumbent LECs without entering into interconnection agreements or other compensation arrangements with the incumbents.” *Autotel*, 697 F.3d at 856. This is precisely the situation the FCC obviously considered to not be an “existing arrangement” in the *T-Mobile Declaratory Ruling*. There is “a gap in the regulatory regime” so the FCC’s interim remedy that was allowed in *T-Mobile* but denied to Autotel is available to WCX. *Autotel* expressly distinguishes the situation in that case from the very situation in our case.

2. “WCX has no grievance because AT&T Texas did not refuse to provide that which Rule 51.715 requires.”

AT&T was not the one that first mentioned the possibility of an interim arrangement.<sup>58</sup> *C.f.* AT&T Response p. 29. The claim that AT&T magnanimously offered an interim arrangement on July 14, and this was the first mention, is simply false.

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<sup>57</sup> *Autotel v. Nevada Bell Tel. Co.*, 697 F.3d 846 (9th Cir. 2012).

<sup>58</sup> AT&T now claims WCX was and is ineligible for interim terms because it already has an “arrangement.” Why then did they agree to discuss interim terms in July?



WCX's desire for an interim solution was communicated in writing to AT&T on July 10. See WCX Petition p. 99 (part of Exhibit 4).<sup>59</sup>

AT&T ultimately falls back on the argument that it actually offered interim terms, and thus cannot be held to have violated the rule. Response p. 30. But as is clear from the materials, AT&T's "offer" was that WCX capitulate to all of AT&T's demands on an interim basis. The "cost" of "interim" terms was an agreement to directly interconnect via TDM. The "cost" of "interim" terms was to agree to AT&T's restrictions, with the result that WCX would be in breach if it provided several clearly-authorized CMRS services. The "cost" was exactly what the interim rules were designed to avoid: AT&T's "interim" terms required WCX "to accept transport and termination rates not in accord with the [] rules." These were not "interim" "transport and termination" terms; it was a full-blown agreement, that decided everything in AT&T's favor on all issues. AT&T's claim that this is consistent with 51.715 is laughable and frivolous on its face.

3. "WCX abandoned its short-lived effort to obtain an interim arrangement."

WCX never abandoned its request for interim terms. The only mutually signed writing addressing the topic expressly preserves the request. See WCX Petition Exhibit 1 (p. 80). AT&T refused to do a stand-alone interim transport and termination agreement, and would not budge from its wrongful insistence that WCX agree to all of AT&T's positions on all potential issues on an interim basis, including on topics that have nothing to do with transport and termination. It was clear there would be no

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<sup>59</sup> "Due to this delay, can AT&T please confirm that AT&T has no problems or issues at all with indirect interconnection with WCX on a bill and keep basis for all traffic? As I stated before, I want to begin routing traffic asap, so while AT&T figures out what it wants to do with CMRS ICAs perhaps I can route through an active CLEC Interconnection. One issue I had when I contacted a CLEC to ask them about this was they were afraid that AT&T would somehow punish them through retribution if they routed traffic on my CMRS's behalf. Surely this is not AT&T's intent, is it? A email from you saying that AT&T has no issues with WCX routing through a CLEC while AT&T figures out its positions on interconnection agreements and that AT&T will treat that traffic as bill and keep would suffice." (emphasis added)

agreement. When it became clear the parties also could not get even close to agreement on permanent terms (because AT&T remained obstreperous and unwilling to compromise on anything) WCX filed for relief. WCX also sought interim relief, just like the rules allow.

There was no abandonment. WCX's only "sin" was trying to negotiate with an unwilling counter-party for longer than was necessary. That is not waiver or abandonment. To the contrary, it is merely going above and beyond the duty of good faith negotiation; something that was, sadly, not ever reciprocated in any meaningful sense. AT&T is trying to have the Commission punish WCX for negotiating in good faith. As usual they have things exactly backwards. AT&T is the one that has refused to negotiate, even with regard to IP-based interconnection despite the FCC's strong and emphatic instruction in *CAF* ¶1011 that they had have a legal duty to negotiate in good faith regarding IP-based interconnection.<sup>60</sup> AT&T openly admits it steadfastly refused to negotiate on this topic. AT&T Response p. 19.<sup>61</sup> AT&T, as usual, thinks that it is exempt

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<sup>60</sup> "In particular, ***even while our FNPRM is pending, we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic.*** The duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise. Moreover, we expect such good faith negotiations to result in interconnection arrangements between IP networks for the purpose of exchanging voice traffic. As we evaluate specific elements of the appropriate interconnection policy framework for voice IP-to-IP interconnection in our FNPRM, we will be monitoring marketplace developments, which will inform the Commission's actions in response to the FNPRM." (emphasis added)

<sup>61</sup> "The only thing AT&T ever said to WCX when WCX mentioned SIP interconnection was that *AT&T could not and would not do it*. That is not negotiation either; it is the antithesis of negotiation." (emphasis in AT&T original). AT&T just confessed to a violation of §252(b)(5) during the "negotiations." They also admit to a violation of FCC Rule 51.301(a). Since the Petition was filed AT&T has "[i]ntentionally obstruct[ed] or delay[ed] ... resolutions of disputes." See 51.301(c)(6). They are so unapologetic one can fairly conclude that if asked they will proclaim with equal vigor an intent to not "negotiate in good faith in the presence, or with the assistance, of the State commission." WCX has no ability to force them to honor their duties. We surely hope the Commission will have more success when it tries to do so. WCX, however, has no desire to get into a "bad faith flame war" with AT&T. We just want the substantive rules enforced by a regulator so we can go home and start competing and providing a full-fledged service.

from all the rules, and everyone else is subject to AT&T's rule and whim. This Commission cannot just sit idly by and let that continue.

4. "Neither Rule 51.715 nor anything in the 1996 Act authorizes the Commission to grant the relief WCX seeks in this proceeding."

The Commission has the power to grant interim relief, and the duty to force AT&T to fulfill its interim transport and termination obligations under the rules. While there is of course a measure of discretion (AT&T Response p. 31, n. 56) there is also an obligation to ensure that rules are followed and justice is done.

AT&T is blocking its users from being able to reach WCX users. AT&T is punishing its own users, and victimizing WCX users for purely self-interested and anti-competitive purposes. The situation and prices are not "symmetrical"; indeed, it is completely one-sided. AT&T's claim that the only requirement in 51.715 is that the ILEC provide transport and termination, and the rule does not comprehend or extend to transport and termination by the requesting carrier, is wholly belied by the mandate in subsection (b) that the arrangement be "symmetrical."

The FCC defines "symmetrical" in *Local Competition Order* ¶1069 – immediately after the discussion of interim transport and termination. "Symmetrical compensation arrangements are those in which the rate paid by an incumbent LEC to another telecommunications carrier for transport and termination of traffic originated by the incumbent LEC is the same as the rate the incumbent LEC charges to transport and terminate traffic originated by the other telecommunications carrier." The use of this defined term in the context of interim arrangements completely rebuts AT&T's contention that the 51.715 obligation is solely about termination by AT&T, and does not also require AT&T to exchange traffic with WCX in both directions.

As shown above, the current situation results in access treatment for non-access traffic. AT&T is refusing to perform switch translations precisely to ensure that calls cannot be originated to WCX's numbers if they are associated with a WCX switch CLLI. AT&T will route only if the WCX number is associated with a wireline CLEC's switch, thereby destroying the wireless nature of WCX's traffic in several ways beyond just call rating for intercarrier compensation purposes. That is not an "existing arrangement" whereby AT&T terminates WCX originated CMRS non-access traffic under the interim requirements or the permanent requirements for non-access traffic: AT&T is imposing access on the carrier with whom WCX has its contract. There is no AT&T-originated traffic addressed to WCX's network as far as AT&T's network is concerned – since AT&T's network "thinks" it is sending it to a CLEC. This is not what the rules contemplate, and the rules require that interim relief be granted.

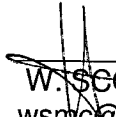
#### **E. Conclusion and Prayer.**

This case has a few of the more familiar "how" and "how much" issues that typically arise in arbitrations. But the real questions are more about "whether." AT&T has refused to route its originating traffic to WCX, and will continue to block for as long as it is allowed to get away with it. But the cost to WCX for getting traffic to flow is a noxious concoction chock-full of contractual rules, requirements, restrictions and prohibitions that unlawfully regulate WCX's provision of interconnected CMRS services to the point that they are banned from use with interconnection. But we are talking about interconnected services under the FCC's rules. AT&T will not quit holding WCX's numbers hostage until it gets terms that make them largely without value or robust use, and provisions that allow AT&T to cancel at its whim by finding some definitional

argument that WCX is using interconnection to provide an "Unauthorized Service." Then we will be back where we started, because AT&T will once again refuse to route. AT&T will go back to holding WCX's numbers hostage.

The Commission has the power, indeed it has the duty and responsibility, to resolve WCX's open/unresolved issues contending that AT&T must honor its duties, must follow the rules and cannot force WCX to waive all of its rights through "voluntary" terms. WCX's open issues are arbitrable. WCX's proposed terms are eligible for consideration. AT&T's terms are not arbitrable or eligible for consideration. WCX is entitled to interim terms, and AT&T must be ordered to implement interim interconnection, consistent with FCC Rule 51.715.

Respectfully submitted,

  
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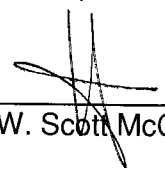
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Counsel for Worldcall Interconnect, Inc.

#### **CERTIFICATE OF SERVICE**

I, W. Scott McCollough, certify that a true and correct copy of this document was served to all parties of record on May 8, 2015, via U.S. mail, electronic mail, facsimile, or overnight delivery.

  
W. Scott McCollough

**DOCKET 44538**  
**WCX THRESHOLD ISSUES BRIEF**  
**EXHIBIT 1**

## **W. Scott McCollough**

---

**From:** Lowell Feldman <lowell.feldman@gmail.com>  
**Sent:** Wednesday, July 30, 2014 11:27 AM  
**To:** sj6424@att.com  
**Cc:** 'W. Scott McCollough'; lowell.feldman@gmail.com  
**Subject:** Interim Indirect Interconnection Agreement One Page  
**Attachments:** Interim Indirect Interconnection Agreement One Page.docx

As promised – here is a one page interim agreement for indirect interconnection.

How is the NDA coming along? We will discuss the start date letter on the call.

Lowell

### Interim Indirect Interconnection Agreement

WCX may enter into an agreement with one Interconnected CLEC per Lata who then shall order new dedicated "Transit" trunks with AT&T for exclusive use by WCX. When WCX does so the parties agree to the following terms:

#### 1.0 Trunking and Compensation for transit service to WCX through CLEC

- 1.1 AT&T Texas and CLEC shall establish one or more separate trunk groups over existing facilities for the transmission and routing of Transit Traffic when either party provides transit service between the other party's end users and a third party carrier's end user (e.g. Commercial Mobile Radio Service Provider – in this instance WCX) using its tandem switch.

- 1.1.1 The trunk groups shall initially be established at one or more AT&T IAL tandem for 251(b)(5) and one IEL tandem for Access Traffic that is not 251(b)(5) per LATA.

- 1.2 In order to effectuate the creation of Transit Trunks, the parties agree to follow the same guidelines as described for 251(b)(5) Trunks in the current ICA between AT&T and CLEC except where the concept of 251(b)(5) exist it shall be replaced by "Transit Traffic" and where concept of "End User" exists it shall be replaced by CLEC Carrier Customer where appropriate. This specifically includes AT&T Routing NPA-NXX codes to CLEC transit customers where such a customer does not have a direct connection to AT&T.

- 2.0 All traffic passed shall be bill and keep to AT&T, CLEC and WCX.

- 3.0 The traffic being passed may be requested to be migrated to a direct connection by either AT&T or WCX, and if requested by either AT&T or WCX, the parties shall work in good faith to migrate the traffic to a direct connection, however, neither party shall be obligated to directly connect until they have a permanent ICA approved by the appropriate state commission.



**DOCKET 44538**  
**WCX THRESHOLD ISSUES BRIEF**  
**EXHIBIT 2**

## W. Scott McCollough

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**From:** Lowell Feldman <lowell.feldman@gmail.com>  
**Sent:** Monday, January 12, 2015 6:53 PM  
**To:** 'W. Scott McCollough'  
**Subject:** FW: GT&C  
**Attachments:** WCX edits to ATT 11215 - GTC.doc

FYI -

---

**From:** Lowell Feldman [mailto:lowell.feldman@gmail.com]  
**Sent:** Monday, January 12, 2015 6:53 PM  
**To:** 'JOHNSON, SONIA G'  
**Cc:** lowell.feldman@gmail.com  
**Subject:** GT&C

Sonia,

I still await your answer as to how the proposed pricing of AT&T implements the Connect America Order and how the Connect America Order is applied in the Attachments.

In the meantime, here is WCX's counter to AT&T's mark-up of the Cricket ICA.

When you get us the explanation on your pricing, we will finish our edits on the Attachments and should soon after schedule a call. I am hopeful that we can reach an agreement. Our intent in our edits is simply to implement the current law with respect to CMRS interconnection with AT&T-ILEC. We will not voluntarily limit or waive any rights we have.

Thanks, and I look forward to your response.

Lowell Feldman

**CELLULAR/PCSCMRS INTERCONNECTION AGREEMENT  
BY AND BETWEEN  
WORLDCALL INTERCONNECT, INC.  
AND  
SOUTHWESTERN BELL TELEPHONE COMPANY D/B/A AT&T TEXAS**

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## CELLULAR/PGSCMRS INTERCONNECTION AGREEMENT

This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 for Commercial Mobile Radio Services (the "Agreement") is by and between Southwestern Bell Telephone Company d/b/a AT&T Texas (**AT&T TEXAS**) (only to the extent that the agent for each such ILEC executes this Agreement for such ILEC and only to the extent that such ILEC provides Telephone Exchange Services as an ILEC in the state(s) listed below), and Worldcall Interconnect, Inc. ("Carrier" also referenced as Worldcall"), (a Texas corporation) shall apply to the state of Texas.

**WHEREAS**, Carrier holds authority from the Federal Communications Commission to operate as a Cellular, Broadband Personal Communications Services ("PCS") and/or Specialized Mobile Radio ("SMR") licensee to provide Authorized Services in the State(s), and intends to provide provides Commercial Mobile Radio Services employing such licensed, quasi-licensed and unlicensed frequency(ies); and

**WHEREAS**, the Parties desire to enter into an agreement for the Interconnection of their respective networks within the portions of the State in which both Parties are authorized to operate and deliver CMRS-originated and CMRS-terminated traffic for the provision of Telecommunications Services pursuant to the Telecommunications Act of 1996 and other applicable federal, state and local laws, and

**WHEREAS**, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will Interconnect their networks and Facilities and provide to each other services as required by the Telecommunications Act of 1996 as specifically set forth herein, and

**WHEREAS**, this Agreement shall apply only to traffic that originates from or terminates to a Cellular Phone via Carrier acting in its capacity as a CMRS provider;

**Commented [A1]:** WCX may also originate or terminate calls where it is acting as a private carrier. This is permissible so long as WCX also has CMRS traffic.

**NOW, THEREFORE**, the Parties hereby agree as follows:

This Agreement is composed of General Terms and Conditions, which are set forth below, together with certain Appendices, Schedules, Exhibits and Addenda which immediately follow this Agreement, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.

## GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1 Capitalized Terms used in this Agreement shall have the respective meanings specified ~~below~~below and/or as defined elsewhere in this Agreement.
- 1.2 **"Access Tandem"** means a local exchange carrier switching system that provides a concentration and distribution function for originating and/or terminating traffic between a LEC end office network and IXC points of presence (POPs).
- 1.3 **"Act"** means the Communications Act of 1934 [47 U.S.C. 153], as amended by the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) codified throughout 47 U.S.C.
- 1.4 **"Affiliate"** is as defined in the Act.
- 1.5 **"Ancillary Services"** means optional supplementary services such as directory assistance, N11, operator services, Service Access Codes (600, 700, 800 and 900 services, but not including 500 services) and Switched Access Services. Enhanced 911 ("E911") is not an Ancillary Service.
- 1.6 **"Ancillary Services Connection"** means a one-way, mobile-to-land Type 1 interface used solely for the transmission and routing of Ancillary Services traffic.
- 1.7 **"Answer Supervision"** means an off-hook supervisory signal sent by the receiving Party's Central Office Switch to the sending Party's Central Office Switch on all Completed Calls after address signaling has been completed.
- 1.8 **"Applicable Law"** means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals, including without limitation those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement.
- 1.9 **"ASR"** ("Access Service Request") is an industry standard form used by the Parties to add, establish, change or disconnect trunks for the purposes of Interconnection.
- 1.10 **"Accessible Letters"** are correspondence used to communicate pertinent information regarding AT&T TEXAS to the client/End User community.
- 1.11 **"AT&T Inc." (AT&T)** means the holding company which directly or indirectly owns the following ILECs: BellSouth Telecommunications, LLC d/b/a AT&T ALABAMA, AT&T FLORIDA, AT&T GEORGIA, AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI, AT&T NORTH CAROLINA, AT&T SOUTH CAROLINA and AT&T TENNESSEE; Illinois Bell Telephone Company d/b/a AT&T ILLINOIS, Indiana Bell Telephone Company Incorporated d/b/a AT&T INDIANA, Michigan Bell Telephone Company d/b/a AT&T MICHIGAN, Nevada Bell Telephone Company d/b/a AT&T NEVADA and AT&T Wholesale, The Ohio Bell Telephone Company d/b/a AT&T OHIO, Pacific Bell Telephone Company d/b/a AT&T CALIFORNIA, Southwestern Bell Telephone Company d/b/a AT&T ARKANSAS, AT&T KANSAS, AT&T MISSOURI, AT&T OKLAHOMA and AT&T TEXAS, and Wisconsin Bell, Inc. d/b/a AT&T WISCONSIN. As used in this Agreement, AT&T refers to the AT&T Inc. ILECs only.
- 1.12 **"AT&T TEXAS"** – As used herein, AT&T TEXAS means Southwestern Bell Telephone Company d/b/a AT&T Texas, the applicable AT&T-owned ILEC doing business in Texas.
- 1.13 **"Authorized Services"** means those Cellular, Broadband Personal Communications Services ("PCS"), ~~covered Specialized Mobile Radio ("SMR") CMRS services that the CMRS provider which Carrier may lawfully provide pursuant to Applicable Law, including the Act. This includes but is not limited to fixed and mobile interconnected and non-interconnected voice and data services, M2M Services, VoLTE Services, Offload, and any other service that intermediates between any of the above.~~

- 1.14 "Business Day" means Monday through Friday, excluding holidays on which AT&T TEXAS does not provision new retail services and products in the State. A listing of AT&T TEXAS holidays is included on the AT&T Prime Access Website.
- 1.15 "CCS" ("Common Channel Signaling") means an out-of-band, packet-switched, signaling network used to transport supervision signals, control signals, and data messages. It is a special network, fully separate from the transmission path of the public switched network. Unless otherwise agreed by the Parties, the CCS protocol used by the Parties shall be SS7.
- 1.16 "Cell Site" means a ~~transmitter/receiver~~ location, operated by Carrier, through which ~~radio links are a connection~~ is established between a wireless system and ~~cellular phones~~ Fixed Station or a Mobile Station.
- 1.17 "Cellular Phone" means a device that can make and receive telephone calls over a radio link while moving around a wide geographic area by connecting to a CMRS provider's network. A Cellular Phone is a type of Mobile Station.
- 1.18 "Central Automatic Message Accounting (CAMA) Trunk" means a trunk that uses Multi-Frequency (MF) signaling to transmit calls from Carrier's switch to an AT&T TEXAS E911 Selective Router.
- 1.19 "Central Office Switch" means a switch, including, but not limited to an End Office Switch, a Tandem Switch and a Remote End Office switch.
- 1.20 "CLLI" ("Common Language Location Identifier") codes provide a unique 11-character representation of a network interconnection point. The first 8 characters identify the city, state and building location, while the last 3 characters identify the network component.
- 1.21 "Claim(s)" means any pending or threatened claim, action, proceeding or suit.
- 1.22 "CLASS Features" ("Custom Local Area Signaling Service Features") means certain Common Channel Signaling based features available to End Users, including: Automatic Call Back; Call Trace; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection.
- 1.23 "CMRS" ("Commercial Mobile Radio Service") is as described in the Act and FCC rules.
- 1.24 "Commission" means the applicable State agency with regulatory authority over Telecommunications.
- 1.24.1 "PUC-TX" means the "Public Utility Commission of Texas".
- 1.25 "Completed Call" means a call that is delivered by one Party to the other Party and for which a connection is established after Answer Supervision.
- 1.26 "Consequential Damages" means Losses claimed to have resulted from any indirect, incidental, reliance, special, consequential, punitive, exemplary, multiple or any other Loss, including damages claimed to have resulted from harm to business, loss of anticipated revenues, savings, or profits, or other economic Loss claimed to have been suffered not measured by the prevailing Party's actual damages, and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions.
- 1.27 "Conversation MOU" means the minutes of use that both Parties' equipment is used for a Completed Call, measured from the receipt of Answer Supervision to the receipt of Disconnect Supervision.
- 1.28 "CPN" ("Calling Party Number") means a Signaling System 7 "SS7" parameter whereby the ten (10) digit number of the calling Party is forwarded from the End Office.
- 1.29 "Day" means calendar day unless "Business Day" is specified.
- 1.30 "DEOT" means Direct End Office Trunk.



- 1.31 "Digital Signal Level" is one of several transmission rates in the time-division multiplex hierarchy including, but not limited to:
- 1.31.1 "DS-0" ("Digital Signal Level 0") is the 64 Kbps zero-level signal in the time-division multiplex hierarchy.
- 1.31.2 "DS-1" ("Digital Signal Level 1") is the 1.544 Mbps first-level signal in the time-division multiplex hierarchy.
- 1.32 "Disconnect Supervision" means an on-hook supervisory signal sent at the end of a Completed Call.
- 1.33 "End Office Switch" is a AT&T TEXAS Central Office Switch that directly terminates traffic to and receives traffic from End Users of local Exchange Services.
- 1.34 "End User" means a Third Party subscriber to Telecommunications Services a Service provided by any of the Parties, or an MVNO of the Parties at retail, including a "roamingRoaming" or "Offload" user of Carrier's CMRS and CMRS network. As used herein, the term "End Users" does not include any of the Parties to this Agreement with respect to any item or service obtained under this Agreement.
- 1.35 "Equal Access Trunk Group" means a trunk used solely to deliver Carrier's customers' traffic through an AT&T access tandem to or from an IXC, using Feature Group D protocols.
- 1.36 "Exchange Service" means Telephone Exchange Service as defined in the Act.
- 1.37 "Facility" means the wire, line, or cable used to transport traffic between the Parties' respective networks.
- 1.38 "FCC" means the Federal Communications Commission.

"Fixed Station" is a Radio Station as defined in Act §153(42) that meets the definition of "Land Station" at FCC Rule 27.4.

- 1.39 "Governmental Authority" means any federal, state, local, foreign or international court, government, department, commission, board, bureau, agency, official, or other regulatory, administrative, legislative, or judicial authority with jurisdiction over the subject matter at issue.
- 1.40 "ILEC" means Incumbent Local Exchange Carrier.
- 1.41 "Intellectual Property" means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.
- 1.42 "Interconnection" means interconnection as required by the Act.
- 1.43 "InterLATA Traffic" is traffic meeting the definition of "InterLATA Service" as defined in §153(26) of the Act.
- 1.44 "InterMTA Traffic" means traffic to or from Carrier's network that originates in one MTA and terminates in another MTA (as determined by the geographic location of the cell site to which the mobile End User is connected). InterMTA traffic is subject to §251(b)(5), but is not "Non-Access" traffic.
- 1.45 "IntraMTA Traffic" means traffic which, at the beginning of the call, originates and terminates within the same MTA and is exchanged between the End User, end user, end-user, Customer or customer of AT&T TEXAS and the Carrier's or CMRS provider's, End User, end user, end-user, Customer or customer, means traffic that meets the definition of "non-access traffic" prescribed by FCC Rule 51.701(b)(2). All references to Local Calls, local traffic and/or Section 251(b)(5) Traffic in the Agreement are hereby replaced by the term "IntraMTA Traffic".
- 1.46 "ISP" ("Internet Service Provider") shall be given the same meaning as used in the FCC Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Federal Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68; FCC Order No. 01-131, released April 27, 2001.
- 1.47 "IXC" ("Interexchange Carrier") means, a carrier (other than a CMRS provider or a LEC) that provides, directly or indirectly, interLATA and/or intraLATA Telephone Toll Services to End Users.

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- 1.48 "LATA" means Local Access and Transport Area as described in the Act.
- 1.49 "LEC" means "Local Exchange Carrier" as defined in the Act.
- 1.50 "LERG" ("Local Exchange Routing Guide") means a Telcordia Reference Document used by Telecommunications Carriers to identify NPA-NXX routing and homing information as well as network element and equipment designations.
- 1.51 ~~"Local Calls" are Authorized Services Completed Calls that originate on either Party's network, that terminate on the other Party's network, that are exchanged directly between the Parties and that, at the beginning of the call, originate and terminate within the same intraMTA. "Local Calls" does not refer to the local calling area of either Party. In order to measure whether traffic comes within the definition of Local Calls, the Parties agree that the origination and termination point of the calls are as follows:~~
- (a) ~~For AT&T TEXAS, the origination or termination point of a call shall be the End Office Switch that serves, respectively, the calling or called party at the beginning of the call.~~
  - (b) ~~For Carrier, the origination or termination point of a call shall be the location of the End User if available, and if not available the Cell Site that serves, respectively, the calling or called party at the beginning of the call.~~
- 1.52 "Loss" or "Losses" means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees).
- "M2M" or "Machine to Machine" means machine-to-machine or the automatic communications between devices without human intervention. M2M solutions typically consist of a system of remote devices, middleware, software and applications that transmits data to a central system.
- 1.52.6 "Mobile Station" means any device authenticated for use by the Carrier that is a "Mobile Station" as defined in §153(34).
- 1.53 ~~"MSC" ("Mobile Switching Center") means Carrier equipment used to route, transport and switch commercial mobile radio service traffic to, from and among its end users and to and from other Telecommunications Carriers.~~
- 1.54 "MTA" ("Major Trading Area") is as defined in 47 C.F.R. § 24.202(a).
- 1.54.5 "MVNO" means a Mobile Virtual Network Operator that provides to its end-user customers the SIM utilizing the originating operator's air interface, and uses the MVNO's interconnection with the originating operator's MSC, its own HLR, and conveyance and interconnection with other networks.
- 1.55 "NANP" ("North American Numbering Plan") is a numbering architecture in which every station in the NANP Area is identified by a unique ten-digit address consisting of a three-digit NPA code, a three digit central office code of the form NXX, and a four-digit line number of the form XXXX.

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"Non-Access Traffic" is as defined at FCC Rule 51.701(b)(2).

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- 1.56 "NPA" ("Numbering Plan Area") also called area code. An NPA is the 3-digit code that occupies the A, B, C positions in the 10-digit NANP format that applies throughout the NANP Area. NPAs are of the form NXX, where N represents the digits 2-9 and X represents any digit 0-9. In the NANP, NPAs are classified as either geographic or non-geographic. a) Geographic NPAs are NPAs which correspond to discrete geographic areas within the NANP Area. b) Non-geographic NPAs are NPAs that do not correspond to discrete geographic areas, but which are instead assigned for services with attributes, functionalities, or requirements that transcend specific geographic boundaries. The common examples of these non-geographic NPAs are NPAs in the N00 format, e.g., 8YY and 5YY, such as 800, 888, 500, 533.

- 1.57 "NXX" means the three-digit switch entity indicator that is defined by the "D", "E", and "F" digits of a 10-digit telephone number within the NANP. Each NXX contains 10,000 station numbers.
- 1.58 "OBF" ("Ordering and Billing Forum") is a forum comprised of LECs and IXC's whose responsibility is to create and document Telecommunication industry guidelines and standards.
- 158.5 "Offload" means a method of connecting a user by means other than Carrier's licensed frequency (e.g., quasi-licensed, unlicensed or other broadband).
- 1.59 "OLI" ("Originating Line Information") is an SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling Party.
- 1.60 "Originating Landline to CMRS Switched Access Traffic" means traffic delivered directly from AT&T TEXAS' originating network to Carrier's network that, at the beginning of the call: (a) originates on AT&T TEXAS' network in one MTA; and, (b) is delivered to the Cellular-Phonemobile unit of Carrier's Customer connected to a Cell Site located in another MTA. AT&T TEXAS shall charge and Carrier shall pay AT&T TEXAS the Originating Landline to CMRS Switched Access Traffic rates in Appendix Pricing - Wireless.
- 1.61 ~~"Paging Traffic" is traffic to Carrier's network that results in the sending of a paging message over a paging or narrowband PCS frequency licensed to Carrier or traffic to AT&T TEXAS' network that results in the sending of a paging message over a paging or narrowband PCS frequency licensed to AT&T TEXAS.~~
- 1.62 "Party" means either AT&T TEXAS or Carrier. "Parties" means both such AT&T TEXAS and Carrier.
- 1.63 "Person" means an individual or a partnership, an association, a joint venture, a corporation, a business or a trust or other entity organized under Applicable law, an unincorporated organization or any Governmental Authority.
- 1.64 "POI" ("Point of Interconnection") means, for direct interconnection purposes, the physical location at which the Parties' networks meet for the purpose of establishing Interconnection. POIs include a number of different technologies and technical interfaces based on the Parties mutual agreement. The POI locations on which they have agreed shall be recorded in writing for future reference. The POI establishes the technical interface, the test point(s) and the point(s) for operational and financial division of responsibility.
- 1.65 "Rate Center" means the specific geographic point and corresponding geographic area defined by the State Commission for the purpose of rating inter- and intra-LATA toll calls.
- 1.66 "Rating Point" means the vertical and horizontal ("V&H") coordinates assigned to a Rate Center and associated with a particular telephone number for rating purposes. The Rating Point must be in the same LATA as the Routing Point of the associated NPA-NXX as designated in the LERG, but need not be in the same location as that Routing Point.
- 1.66.5 "Roamer" means a retail or wholesale customer of a Carrier who seeks Service from the Serving carrier when the Home Carrier is unable to provide Service
- 1.67 "Routing Point" designated as the destination for traffic inbound to services provided by that Telecommunications Carrier that bear a certain NPA-NXX designation. The Routing Point need not be the same as the Rating Point, but it must be in the same LATA as the Rating Point. Central Office Switches are Routing Points for traffic to end users identified by numbers drawn from NPA-NXX designations, as stated in the LERG. Where Carrier has not established Routing Points for its Dedicated NPA-NXXs in its own network, the Routing Point shall be the AT&T TEXAS Tandem Switch where traffic to AT&T TEXAS NXXs in the same NPA is homed.
- 1.68 "Shared Facility Factor" means the factor used to appropriately allocate cost of 2-way DS1 Interconnection Facilities based on proportionate use of facility between AT&T TEXAS and Carrier.

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1.69 "SS7" ("Signaling System 7") means a signaling protocol used by the CCS Network.

1.69.5 "SIP" means Session Initiation Protocol

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1.70 "State Abbreviation" means the following:

1.91.1 "TX" means Texas

"Station" means a "Radio Station" as defined in Communications Act §153(42), and can be a "Mobile Station" as defined in §153(34) or a "Land Station" as defined at FCC Rule 27.4.

1.71 "Switched Access Services" means an offering of access to AT&T TEXAS' network for the purpose of the origination or the termination of access traffic from or to End Users in a given area pursuant to a Switched Access Services tariff.

1.72 "Tandem Switch" or "Tandem(s)" are AT&T TEXAS switches used to connect and switch trunk circuits between and among other Central Office Switches. A Tandem Switch does not include a PBX.

1.73 "Telcordia" means Telcordia Technologies, Inc.

1.74 "Telecommunications Carrier" is as defined in the Act.

1.75 "Telecommunications Service" is as defined in the Act.

1.76 "Telephone Toll Service" is as defined in the Act.

1.77 "Terminating IntraLATA InterMTA Traffic" means Carrier's originating traffic that, at the beginning of the call: (a) originates on Carrier's network is both intraMTA and terminates in the same LATA; (b) is sent from the Cellular Phone of Carrier's End User connected to Carrier's Cell Site located in one MTA; InterLATA and; (c) is terminated on AT&T TEXAS' network in another MTA. For such InterMTA IntraLATA Traffic, AT&T TEXAS shall charge and Carrier shall pay AT&T TEXAS the Terminating IntraLATA InterMTA Traffic rates in Appendix Pricing -- Wireless when the Parties use Direct Interconnection. Carrier may, but is not required to, route its Terminating IntraLATA InterMTA Traffic through an Intermediary Provider's FGD arrangements.

1.78 "Terminating Switched Access Traffic" means Carrier's originating traffic that, at the beginning of the call: (a) originates on Carrier's network; (b) is sent from the Cellular Phone of Carrier's End User or the Cellular Phone of a Third Party connected to a Cell Site located in one MTA and one LATA, and; (c) terminates on AT&T TEXAS' network in another MTA and another LATA (i.e., the traffic is both InterMTA InterMTA and InterLATA); and is terminated on AT&T Texas' network. This traffic must be terminated to AT&T TEXAS as FGD terminating switched access per AT&T TEXAS' Federal and/or State Access Service tariff, either directly from Carrier or through an Intermediary Provider's FGD arrangements.

1.79 "Third Party" means any Person other than a Party.

1.80 "Toll Free Service" means service provided with a dialing sequence that invokes toll-free (i.e., 800-like) service processing. Toll Free Service includes calls to the Toll Free Service 8YY NPA SAC Codes.

1.81 "Trunk(s)" or "Trunk Group(s)" means the switch port interface(s) used and the communications path created to connect Carrier's network with AT&T TEXAS' network for the purpose of exchanging Authorized Services Local Calls Traffic for purposes of Interconnection.

1.82 "Trunk Side" refers to a Central Office Switch interface that offers those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone station sets.

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"VoLTE" means Voice over LTE, as defined by GSMA PRD IR 92 and successor specifications. It is distinguished from other VOIP applications allowing voice calls over only IP-based networks by virtue of

its voice application capabilities being managed inside the LTE Network and not only being provided "over the top" via the public Internet or Offload.

- 1.83 "Wire Center" denotes a building or space within a building that serves as an aggregation point on a given Telecommunication Carrier's network, where transmission Facilities are connected and traffic is switched. AT&T TEXAS' Wire Center can also denote a building in which one or more Central Office Switches, used for the provision of Exchange Services and Switched Access Services, are located.

## 2. INTERPRETATION, CONSTRUCTION AND SEVERABILITY

### 2.1 Definitions

- 2.1.1 For purposes of this Agreement, certain terms have been defined in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and/or "but not limited to." The words "will" and "shall" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement; the use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement will have the meaning in the Act, or in the absence of their inclusion in the Act, their customary usage in the Telecommunications industry as of the Effective Date.

### 2.2 Headings Not Controlling

- 2.2.1 The headings and numbering of Sections, Parts, Appendices, Schedules and Exhibits to this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

This Agreement incorporates a number of Appendices which, together with their associated Attachments, Exhibits, Schedules and Addenda, constitute the entire Agreement between the Parties. In order to facilitate use and comprehension of the Agreement, the Appendices have been grouped under broad headings. It is understood that these groupings are for convenience of reference only, and are not intended to limit the applicability that any particular Appendix, Attachment, Exhibit, Schedule or Addenda may otherwise have.

### 2.3 Referenced Documents

- 2.3.1 Unless the context shall otherwise specifically require, and subject to Section 19, "Intervening Law," whenever any provision of this Agreement refers to a technical reference, technical publication, Carrier Practice, AT&T TEXAS Practice, any publication of Telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement (each hereinafter referred to as a "Referenced Instrument"), it will be deemed to be a reference to the then-current version or edition (including any amendments, supplements, addenda, or successors) of each Referenced Instrument that is in effect at time of use, and will include the then-current version or edition (including any amendments, supplements, addenda, or successors) of any other Referenced Instrument incorporated by reference therein.

### 2.4 References

- 2.4.1 References herein to Sections, Paragraphs, Exhibits, Parts, Schedules, and Appendices shall be deemed to be references to Sections, Paragraphs and Parts of, and Exhibits, Schedules and Appendices to, this Agreement unless the context shall otherwise require.

## 2.5 Tariff References

- 2.5.1 To the extent a tariff provision or rate is incorporated or otherwise applies between the Parties due to the provisions of this Agreement, it is understood that said tariff provision or rate applies only in the jurisdiction in which such tariff provision or rate is filed, and applies to Carrier and only the **AT&T TEXAS** ILEC(s) that operates within that jurisdiction. Further, it is understood that any changes to said tariff provision or rate are also automatically incorporated herein or otherwise hereunder, effective hereunder on the date any such change is effective.
- 2.5.2 References to state tariffs throughout this Agreement shall be to the currently effective tariff for the state or jurisdiction in which the services were provisioned; provided however, where certain **AT&T TEXAS** services or tariff provisions have been or become deregulated or detariffed, any reference in this Agreement to a detariffed or deregulated service or provision of such tariff shall be deemed to refer to the service description, price list or other agreement pursuant to which **AT&T TEXAS** provides such services as a result of detariffing or deregulation.

## 2.6 Conflict in Provisions

- 2.6.1 If any definitions, terms or conditions in any given Appendices, Attachments, Exhibits, Schedules or 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 Appendix, Attachment, Exhibit, Schedule or Addendum. For example, if an Appendix contains a Term length that differs from the Term length in the main body of this Agreement, the Term length of that Appendix will control the length of time that services or activities are to occur under that Appendix, but will not affect the Term length of the remainder of this Agreement.

## 2.7 Joint Work Product

- 2.7.1 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

## 2.8 Severability

- 2.8.1 The Parties negotiated the terms and conditions of this Agreement for Interconnection and services as a total arrangement and it is intended to be non-severable. However, if any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

## 2.9 Incorporation by Reference

- 2.9.1 The General Terms and Conditions of this Agreement, and the Interconnection and services provided hereunder, shall be subject to all of the legitimately related rates, terms and conditions contained in the Appendices to this Agreement, which are incorporated herein by reference and deemed a part hereof for purposes of such Interconnection and services. Without limiting the general applicability of the foregoing, the following provisions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each Interconnection, Network Element, function, facility, product or service provided hereunder: definitions; interpretation, construction and severability; general responsibilities of the Parties; effective date, term and termination; billing and payment of charges; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnity; remedies; intellectual property; publicity and use of trademarks and service

marks; confidentiality; intervening law; governing law; regulatory approval; changes in end user local exchange service provider selection; compliance and certification; law enforcement and civil process; relationship of the parties/independent contractor; no Third Party beneficiaries; disclaimer of agency; assignment; subcontracting; environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; End User inquiries; expenses; conflict of interest; survival of obligations, scope of agreement; amendments and modifications; and entire agreement.

2.10 State-Specific Rates, Terms and Conditions

2.10.1 For ease of administration, this Agreement contains certain specified rates, terms and conditions which apply only in a designated State ("State-Specific Terms"). To the extent that this Agreement contains State-Specific Terms, such State-Specific Terms shall not apply and shall have no effect in any other State(s) to which this Agreement is submitted for approval under Section 252(e) of the Act.

2.10.2 State-Specific Terms, as the phrase is described in Section 2.10.1 above, have been negotiated (or, in the case of 2.10.2 above, have been included in the Agreement per state requirement) by the Parties only as to the States where this Agreement has been executed, filed and approved. When the Parties negotiate an Interconnection agreement for an additional state, neither Party shall be precluded by any language in this Agreement from negotiating State-Specific Terms for the state in which they are to apply.

2.11 Scope of Application

2.11.1 This Agreement may be negotiated for more than one State. However, this Agreement shall be applied separately and distinctly to the Parties' operations in each individual State.

2.12 Scope of Obligations

2.12.1 Notwithstanding anything to the contrary contained herein, AT&T TEXAS' obligations under this Agreement shall apply only to:

2.12.1.1 the specific operating area(s) or portion thereof in which AT&T TEXAS is then deemed to be the ILEC under the Act (the "ILEC Territory"), and assets that AT&T TEXAS owns or leases and which are used in connection with AT&T TEXAS' provision to Carrier of any Interconnection products or services provided or contemplated under this Agreement, the Act or any tariff or ancillary agreement referenced herein (individually and collectively, the "ILEC Assets").

2.13 Affiliates

2.13.1 These General Terms and Conditions and all Attachments, Exhibits, Appendices, Schedules and Addenda hereto constituting this Agreement, including subsequent amendments, if any, shall bind AT&T TEXAS, Carrier and any Affiliate of Carrier. Carrier further agrees that the same or substantially the same terms and conditions shall be incorporated into any separate agreement between AT&T TEXAS and any such Affiliate of Carrier that continues to operate as a separate entity. This Agreement shall remain effective as to Carrier and any such Affiliate of Carrier for the Term of this Agreement until either AT&T TEXAS or Carrier or any such Affiliate of Carrier institutes renegotiation, or this Agreement expires or terminates, pursuant to the provisions of this Agreement. Notwithstanding the foregoing, this Agreement will not supercede a currently effective Interconnection agreement between any such Affiliate of Carrier and AT&T TEXAS until the earlier of the date when the other agreement has: 1) expired; 2) been noticed for renegotiation pursuant the terms thereof, or 3) otherwise terminated provided; however, each Affiliate of Carrier operating under a separate Interconnection agreement within a State shall have its own unique ACNA codes and OCN.

3. GENERAL RESPONSIBILITIES OF THE PARTIES

- 3.1 ~~Each so long as the Parties employ TDM-based traffic interchange, each~~ Party is individually responsible to provide Facilities within its network that are necessary for directly or indirectly routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with AT&T TEXAS's network as referenced in Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275. Regardless of the format and protocol used for interconnection, each Party will terminate the traffic it receives in that standard format to the proper address on its network using the format and protocol employed within the terminating Party's network. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.
- 3.2 The Parties shall exchange technical descriptions and forecasts of their Interconnection and traffic requirements in sufficient detail necessary to establish the Interconnections required to assure traffic completion to and from all End Users in their respective ~~designated~~ within industry standard criteria for grade of service areas.
- 3.3 Each Party is solely responsible for all products and services it provides to its End Users and to other Telecommunications Carriers.
- 3.4 Insurance
- 3.4.1 This Section 3.4 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument. The other Party must be named as an Additional Insured on the Commercial General Liability policy. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance, which may be provided through a program of self-insurance as provided in 3.4.4. Each Party shall require its subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required under Section 3.4. The Parties agree that companies affording the insurance coverage required under Section 3.4 shall have a rating of B+ or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage. Each Party agrees to provide the other Party with at least thirty (30) Days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.
- 3.4.2 If Carrier is not and does not collocate with AT&T TEXAS during the Term, the following insurance requirements will apply:
- 3.4.2.1 Each Party shall keep and maintain in force at each Party's expense all insurance required by Applicable Law, including: Workers' Compensation insurance with benefits afforded under the laws of the state in which the Services are to be performed and Employers Liability insurance with minimum limits of \$100,000 for Bodily Injury-each accident, \$500,000 for Bodily Injury by disease-policy limits and \$100,000 for Bodily Injury by disease-each employee; Commercial General liability insurance with minimum limits of: \$2,000,000 General Aggregate limit; \$1,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$2,000,000 Products/Completed Operations Aggregate limit, with a \$1,000,000 each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of \$300,000 are required for lease agreements; if use of a motor vehicle is required, Automobile liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.



- 3.4.3 If at any time during the Term Carrier decides to collocate with **AT&T TEXAS**, the following insurance requirements will apply:

~~At all times during set out in the Term, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and collocation tariff or bonds required by Applicable Law: Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Interconnection Agreement and Employers Liability insurance with minimum limits of \$100,000 for Bodily Injury each accident, \$500,000 for Bodily Injury by disease policy limits and \$100,000 for Bodily Injury by disease each employee; Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$10,000,000 Products/Completed Operations Aggregate limit; with Collocation Attachment will apply on a \$5,000,000 each occurrence sub-limit for Products/Completed Operations; Fire Legal Liability sub-limits of \$2,000,000; if use of an automobile is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles prospective basis.~~

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- 3.4.4 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:

The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and

- 3.4.4.1 The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and

- 3.4.4.2 The Party desiring to satisfy its general liability obligations through self-insurance must provide evidence acceptable to the other Party that it has a net worth of at least 10 times the amount of insurance required and maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.

- 3.4.5 Each Party agrees to provide the other Party with at least thirty (30) Days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.

- 3.4.6 This Section 3.4 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument.

Carrier represents that a complete list of Carrier's Access Carrier Name Abbreviation (ACNA) codes, each with the applicable Operating Company Number (OCN), covered by this Agreement is provided below. Any addition, deletion or change in name associated with the listed ACNA codes, or any changes in OCNs, requires notice to **AT&T TEXAS**. Notice must be received before orders can be processed under a new or changed ACNA code or OCN.

ACNA/OCN List.      OCN 139F

- 3.5 Each Party shall be responsible for labor relations with its own employees. Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees is delaying or threatens to delay such Party's timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other

Party (for example, by using its management personnel to perform work or by other means) in the event of a labor dispute to the extent permitted by Applicable Law.

- 3.6 Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.
- 3.7 Each Party agrees it will comply with the Communications Assistance to Law Enforcement Act of 1994 (CALEA).

#### 4. EFFECTIVE DATE, TERM, AND TERMINATION

- 4.1 In **AT&T TEXAS**, the effective date of this Agreement (the "Effective Date") shall be ten (10) calendar days after the Commission approves this Agreement under Section 252(e) of the Act or, absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act.
- 4.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on ~~twelve~~ years from the Effective Date (the "Term"). This Agreement shall expire if either Party provides written notice, within one hundred-eighty (180) Days prior to the expiration of the Term, to the other Party to the effect that such Party does not intend to extend the Term. Absent the receipt by one Party of such written notice, this Agreement shall remain in full force and effect on and after the expiration of the Term, subject to the provisions of this Section 4.
- 4.3 Notwithstanding any other provision of this Agreement, either Party (at its sole discretion) may terminate this Agreement, and the provision of Interconnection and services, in the event the other Party (1) fails to perform a material obligation or breaches a material term of this Agreement and (2) fails to cure such nonperformance or breach within forty-five (45) Days after written notice thereof. Should the nonperforming or breaching Party fail to cure within forty-five (45) Days after such written notice, the noticing Party may thereafter terminate this Agreement immediately upon delivery of a written termination notice.
- 4.4 If pursuant to Section 4.2, this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement upon sixty (60) days written notice to the other Party of its intention to terminate this Agreement, subject to Sections 4.5 and 4.6. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 4.4 other than its obligations under Sections 4.5 and 4.6.
- 4.5 Upon termination or expiration of this Agreement in accordance with Sections 4.2, 4.3 or 4.4:
  - 4.5.1 Each Party shall continue to comply with its obligations set forth in Section 36, "Survival of Obligations"; and
  - 4.5.2 Each Party shall promptly pay all undisputed amounts owed under this Agreement prior to the receipt of such notice of termination or the expiration of the Agreement, subject to Section 9, "Dispute Resolution"
- 4.6 If **AT&T TEXAS** serves notice of expiration or termination pursuant to Section 4.2 or Section 4.4, respectively, Carrier shall provide **AT&T TEXAS** written confirmation, within ten (10) Days, that Carrier either wishes to (1) commence negotiations with **AT&T TEXAS**, or adopt an agreement, under Sections 251/252 of the Act, or (2) terminate its Agreement. Carrier shall identify the action to be taken for each affected agreement identified in **AT&T TEXAS'** notice.
- 4.7 If Carrier serves notice of expiration or termination pursuant to Section 4.2 or Section 4.4, and also wishes to pursue a successor agreement with **AT&T TEXAS**, Carrier shall include a written request to commence negotiations with **AT&T TEXAS**, or adopt an agreement, under Sections 251/252 of the Act and identify which state(s) the successor agreement will cover. Upon receipt of Carrier's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.

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