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FILE

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December 6, 2007

Ms.. Renee Jenkins, Director
Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street, 13th floor
Columbus OH 43215-3793

RE: *Revolution Communications Company, Ltd. v. AT&T Ohio*
Case No. 06-427-TP-CSS

Dear Ms. Jenkins:

Enclosed you will find for filing in the above-named proceeding the following:

1) A motion and request for expedited ruling by Revolution Communications Company, Ltd. for an extension of time to file its Reply Brief; and
2) The Reply Brief of Revolution Communications Company, Ltd.

Respectfully submitted,

Mary W. Christensen

Mary W. Christensen

cc: Jon F. Kelly, Esq.
Steven R. Shaver, Esq.

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Revolution Communications Company, Ltd., Against AT&T Ohio for Unjust and Unreasonable Billings and Other Violations Under the Parties' Interconnection Agreement.	)))))	Case No. 06-427-TP-CSS

MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF AND REQUEST FOR EXPEDITED RULING BASED ON ACTS OF GOD

Pursuant to Ohio Administrative Code ("OAC") Rules 4901-1-12 generally and 4901-1-12(C) in particular and 4901-1-13(A) and (B), Revolution Communications Company, Ltd., ("Revolution") respectfully moves the Public Utilities Commission of Ohio ("PUCO") to grant Revolution an extension of time until December 6, 2007 to file its initial brief otherwise due in this matter on December 5, 2007 and for an expedited ruling, to which respondent AT&T Ohio ("AT&T") does not object, as further set forth below. The reasons for the motion and the request for expedited ruling are stated in the following Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Revolution filed the complaint in this matter on March 15, 2006. After Commission-assisted mediation concluded, the Commission scheduled a hearing in this matter, which had previously been continued by agreement of the parties. The continued hearing was to begin on September 20, 2007. In the meantime, the parties agreed to forego the public hearing and to brief the matter based on the record of this proceeding. The then existing public record was to be supplemented, by agreement of the parties, with deposition transcripts and other discovery responses, with each filing the responses that it obtained from the other party. The initial briefs of both parties, per Attorney Examiner Entry issued September 19, 2007, were to be filed on November 7, 2007 and the reply briefs, December 5, 2007.

Revolution requests this extension because of circumstances beyond its Ohio counsel's control. Winter storm conditions prevented counsel's traveling to Columbus and her preparation for filing and filing of the reply brief with the PUCO and the unavailability of services, because of the storm, upon which counsel was relying to file the brief in anticipation of the storm.

Revolution asked AT&T counsel on the morning of December 5, with notice to the PUCO's Legal Director, for AT&T's agreement to a one-day extension of the reply brief filing date. AT&T has indicated that it has no objection to Revolution's request for an extension of time to file the reply briefs on December 6, 2007 and has no objection to Revolution's request for an

expedited ruling. It is Revolution's understanding that both parties will file their reply briefs on December 6, 2007.

Revolution believes that the delay in filing the reply briefs in this matter will not cause prejudice either to the PUCO as trier of fact or AT&T, which does not object. Therefore, Revolution respectfully requests the PUCO's favorable consideration and granting of its motion and its acceptance of it Reply Brief in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion for extension of time and request for expedited ruling of Revolution Communications Company, Ltd. in PUCO Case No. 06-427-TP-CSS has been served by e-mail and U.S. Mail, first class postage prepaid, to Jon F. Kelly, Esq., 150 East Gay Street, Room 4-A, Columbus OH 43215 this 6th day of December, 2007.

Mary W. Christensen

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Revolution Communications Company, Ltd., Against AT&T Ohio for Unjust and Unreasonable Billings and Other Violations Under the Parties' Interconnection Agreement.	)))))	Case No. 06-427-TP-CSS

REPLY BRIEF OF REVOLUTION COMMUNICATIONS COMPANY, LTD. TO AT&T OHIO'S INITIAL BRIEF

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Revolution Communications Company, Ltd., Against AT&T Ohio for Unjust and Unreasonable Billings and Other Violations Under the Parties' Interconnection Agreement.	)))))	Case No. 06-427-TP-CSS

REPLY BRIEF OF REVOLUTION COMMUNICATIONS COMPANY, LTD. TO AT&T OHIO'S INITIAL BRIEF

Revolution Communications, Ltd, [hereinafter "Revolution"] files this Reply to AT&T Ohio's Initial Brief [hereinafter the "Brief"]. Revolution will follow the order of AT&T Ohio, [hereinafter "AT&T"], in its presentation of the facts and argument.

I. Introduction

This case involves two primary issues:

CCI: AT&T has demanded that Revolution take the accuracy of AT&T's CCI billing as an article of faith. AT&T has admitted its CCI billing is inaccurate, even as much as 100% inaccurate; yet, AT&T has not corrected its billing systems. Does Revolution have to take AT&T's billing as an article of faith?

TT27: Monthly bills require OBF compliance; however, is the billing party [AT&T] relieved of the duty of complying with monthly billing requirements if the charges are not billed for several months or years after the month in which the charges were allegedly incurred because of an error by the billing party [AT&T]?

As for the CCI charges, which are charges for a technician to do manual work to establish new service, AT&T argues it's "application of dispatch charges [technician] was reasonable and lawful." AT&T takes the unsupportable position that its summary records are enough to prove that a technician did a particular job. As the PUCO's own records and files show, AT&T has

admitted to a 100% error rate related to the over-billing of CCI charges in a previous case and AT&T did not change the error-riddled billing system until August 2005. Revolution has not had reason to dispute AT&T charges since August 2005, after AT&T had finally switched to a different billing system.

As for the TT27 Charges, which are back-billed charges by AT&T for alleged connections that do not terminate on AT&T, AT&T's argument is that Revolution "cannot dispute that the traffic was handled by AT&T Ohio and is therefore compensable." Unfortunately, that is exactly how AT&T handled the pre-suit disputes for both sets of claims; simply, AT&T says it is so and the disputing CLEC must abide by AT&T's proclamation. In fact, many of the TT27 charges were over two years old when finally billed to Revolution and all are barred by the Interconnect Agreement [the "ICA"] and Federal law limitation provisions. AT&T even admits that it has never made a claim for these charges; thus, by admission all of AT&T's claims, including CCI, are time barred.

Further, AT&T can not prove that the TT27 charges are accurate or that they meet minimal billing standards. Revolution has asked AT&T to provide the TT27 charges in an OBF compliant format but AT&T has flatly refused; stating that the Daily Usage Files [the "DUF"] contain the information. Unfortunately, AT&T destroyed the current DUF after just a couple of weeks but apparently this same standard is not applicable to a CLEC because AT&T expects Revolution to have the DUF two or more years later.

This entire case is quit simple: AT&T is at fault in both billing issues, CCI and TT27, and AT&T wants Revolution to pay for AT&T's billing mistakes. AT&T's CCI problem is a matter of public record; yet, AT&T did not fix the billing error until August 2005. Also, like the CCI, the TT27 was caused, again, by AT&T's faulty billing program. In each of these instances

Revolution has shown that AT&T's billing is untrustworthy; yet, AT&T has not and cannot, because of its own business practice, show any evidence to substantiate the accuracy of their billing.

II. The Interconnection Agreement

AT&T argues that because Revolution did not place into escrow all of the funds that are in dispute, over $360,000, that Revolution has violated the ICA Section 8.4; requiring the entire amount in dispute to be paid into an interest bearing account.[1] Currently, Revolution has $100,000 on deposit in an escrow account approved by this Commission.[2]

As stated and shown, what is fundamentally at stake here is whether AT&T's guerilla billing practices are to be approved or constrained to reasonable and just practices. But, AT&T is not just asking the PUCO to approve its mistakes, destroyed evidence and disregard for approved billing standards; AT&T is also setting up the approval of another unreasonable practice. And that is, if AT&T can set the billing dispute amount at its pleasure, then AT&T can strangle any CLEC under the canard of a billing dispute. Try this scenario, AT&T sets the dispute amount high, demands escrow of the new amount, and the CLEC is out of business or out of resources to fight.

This is not hyperbole; that is this case. AT&T has admitted to two tremendously costly billing errors. However, AT&T's response to these errors is not one of humility but how can it profit from its mistakes. Now, they are not only asking the PUCO to approve of their unreasonable billing practices but to also approve the ability to destroy a CLEC before it can even dispute AT&T's mistakes. Specifically, if a CLEC is held to the ICA for every billing dispute, as argued by AT&T, then AT&T just needs to make the amount un-payable by the

[1] Brief pp. 5 and 43.
[2] PUCO Case No. 06-427-TP-CSS, Entry, at finding 7 (March 29, 2006) (referred to hereinafter as "March 29, 2006 Entry")

CLEC. If the CLEC can not put into escrow two years worth of charges, which is this case, then the CLEC is finished and AT&T has destroyed another retail market competitor.

Ironically, AT&T enjoys arguing the ICA, though usually out of context, by stating the ICA is silent on how to handle back-bill issues [TT27 issue].[3] Yet, the ICA is also silent on escrow calculation when a party is demanding two years worth of charges in a single bill. As discussed in Revolution's Initial Brief, the ICA contemplates monthly billing, not back-billing and not multi-month billing. The ICA does not provide for the unreasonable position by AT&T that two years worth of charges shall be escrowed or the dispute is waived.

Despite AT&T's argument, it is a moot one. Revolution petitioned the PUCO on this issue and the PUCO set the escrow at $100,000.[4]

III. CCI[5]

AT&T addresses the CCI factual issues in its Brief on pages 6-30 and its legal argument on pages 43-44. The focus of the factual narrative is on how CCI charges are generated, the processing and provisioning of an order, the billing for the order and a cursory description of the dispute resolution process. It appears to be largely a description of how the process should work and is provided without reference to the point in time that AT&T witness Christensen is describing from the multi-year evolution of AT&T's systems. For example, if Mr. Christensen's testimony, upon which AT&T's argument appears to rely, is about the system as it works today, Mr. Christensen's description is irrelevant if one accepts AT&T's argument that its systems are

[3] Brief p. 38

[4] March 29, 2006 Entry at finding 7.

[5] While the CCI issue has been argued primarily by reference to the ICA between the parties and federal policy and law, Ohio law from the beginning of Ohio's regulation of public utilities has required under R.C. Section 4905.22: "Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission Effective Date: 10-01-1953

improving.[6] Or if Revolution is not regularly migrating "an end user from AT&T's local service to the CLEC's service,"[7] then the discussion of the "various activities that must occur before, during and after a CLEC submits its Local Service Request ('LSR') to AT&T Wholesale"[8] are not germane.

On pages 6-30 of AT&T's Brief, AT&T goes through an extensive, and unnecessary, explanation of the process a technician goes through for AT&T to be able to bill for his/her services. Revolution has no quarrel with AT&T over paying for technician services *when a technician actually performs the service.* It's AT&T's inability to provide Revolution with verifiable evidence of a technician's having actually performed the service that brings Revolution to this proceeding. AT&T has previously admitted to an error rate of proper billings for CCI of 100% of the billings Revolution put in dispute in PUCO Case No. 02-1957-TP-UNC, which addressed AT&T's charging Revolution for technician services when no technician services were required. That experience made Revolution wary and very careful about its review of billings. AT&T's practice of charging technician rates [$33.88] for non-technician services [$0.74] continued even after PUCO Case No. 02-1957-TP-UNC from 2003-2005. Revolution propounded a number of requests for admissions in this proceeding, covering the period from 2003 to 2005:

> **Revolution Request # 23:**
>
> Admit that in 2005 [AT&T's] billing system on more than one occasion improperly billed Revolution as though [AT&T] human personnel were involved in processing orders when in fact those orders were processed automatically, without [AT&T] human intervention.
>
> **Response:**

[6] Brief p. 44 ("Mistakes were made. Traffic was not properly billed when it should have been. AT&T Ohio rectified those problems and attempted to recover money legitimately owed to it by Revolution and others.")
[7] Brief p. 7
[8] *Id.*

Admitted.[9]

AT&T went on to admit in Requests 25 and 27 to the same continuing billing errors for years 2004 and 2003, respectively.[10]

In the nearly 24 pages AT&T dedicates to explaining the technician's duties and processes, AT&T does not, even one time, explain or address the errors in its billing system, the bills being rendered to the interconnecting CLEC as the final expression of AT&T's recording of the CCI activity. However, in AT&T's testimony, we learned from AT&T witness Donna Navickas that there have been *no changes* to the system since at least 2003.[11] Further, AT&T witness Michele Barnes testified that the system was the same from 2000 to August 2005, which is when the dispute over the CCI charges ends.[12] And we know from AT&T's admissions above that there have been errors occurring in the system during the entire time at issue. As Revolution said in its Initial Brief: "A system that was wrong in 2000, 2001, 2002, and 2003 that has not been fixed does not miraculously cure itself in 2004 and 2005."

Relevant to this issue but not made by AT&T in its Brief is any representation by AT&T, supported by evidence, that shows that the AT&T system billed properly and that the services charged to Revolution were services Revolution received. The record in this case is unchallenged, and unchallengeable, on the fact that AT&T's billing system was highly suspect and untrustworthy. AT&T raises the issue of which party has the burden of proof; Revolution has carried its burden of showing that AT&T's billing system could not be trusted and AT&T has failed, completely, in rebutting the evidence that its system had any degree of credibility in the way it billed Revolution.

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[9] Revolution Exhibit 2, AT&T's Response to Revolution's Third Set of Data Request.
[10] *Id.*
[11] Revolution Exhibit 6, Navickas depo. p. 23 l. 4-10.
[12] Revolution Exhibit 3, Barnes depo. p. 21 l. 7 – p. 22 l. 4.

Interestingly, this entire matter would be academic if AT&T had records to show that a technician completed any of the services claimed. AT&T has no proof of its claim because AT&T does not retain the underlying records related to pass through connections [CCI] beyond 30-90 days.[13] In other words, records that would be able to show that AT&T technicians provided a service or *did not*, are gone forever—even before the dispute resolution process can be completed by a complaining CLEC. Revolution contends that the burden of proof should shift from a party in Revolution's position when the party who had the best and only evidence, in this case AT&T, evidence critical to the resolution of a dispute, destroys that evidence, regardless of whether the destruction was authorized or not.[14] AT&T cannot complain about the burden of proof when the very records that could answer the question at issue were destroyed by AT&T.

AT&T allocates five pages of its Brief to discuss the claim and dispute process for billing. The entire dissertation by AT&T is as irrelevant as the lengthy discussion concerning the technicians. This is made clear when at the conclusion of this discussion; AT&T makes no claim regarding Revolution's compliance or non-compliance with the dispute resolution process.

[13] Revolution Exhibit 3, Barnes depo p. 22 l. 5 – p. 24 l. 1

[14] In its June 26, 2003 recommendation to the FCC that SBC-Ameritech be authorized to provide in-region interLATA telecommunications services in Ohio under Section 271 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, the PUCO recited the status of the Bearing Point (the OSS auditor for PUCO Case No. 00-942-TP-COI, hereinafter referred to as the "Ohio OSS proceeding") issues still subject to testing by Bearing Point, including SBC's data retention policies, including the deletion of the DUF records within 45 days that is at issue in this proceeding. Even though it had concluded that SBC Ohio "has opened its local market to competitive local exchange companies (CLECs) who wish to do business in Ohio," the PUCO opined in Appendix A to its *SBC Ohio Report and Evaluation Section 271*, page 15 in footnote 10:

> Exception 19-SBC Ameritech's data retention policies regarding source data do not enable thorough and complete audits to be conducted or facilitate the resolution of potential disputes which may arise between the CLECs, SBC Ameritech, and the regulatory agencies regarding the correct reporting of performance measurement results."

This footnote demonstrates the PUCO's understanding of the critical importance of access to source data in performance measure testing and its concern about SBC's retention policy. It is not unreasonable to extrapolate from the PUCO's concern then about source data for the OSS purposes what should be its concern now about the unavailability of the same source data when a CLEC cannot verify a bill and the PUCO is without source data in a dispute between AT&T and an interconnecting CLEC in the immediate proceeding.

However, AT&T does appear to leave the impression that it reviews all "claims" by CLECs under the dispute resolution process. It does not. AT&T reviews only random claims, not all of them, and then after further dispute AT&T only reviews the process that the original reviewer utilized. [15] In other words, AT&T does not review all of the claims and, if further disputed, the only review is to the process, *not the data at issue* in the specific dispute by the CLEC. Accordingly, any impression by AT&T that its review process has confirmed any of the claims are valid is simply erroneous.

Further, within AT&T's discussion of the CCI, AT&T makes this self-serving statement: "AT&T requires its employees to insure that all . . . bills, and records are prepared carefully and honestly."[16] Again, it's nice that AT&T has such a policy, but AT&T's saying that this is the company's policy does not constitute evidence that the investigation process is thorough, providing appropriate access to source information that would support its response to the CLEC in the dispute resolution process. And is certainly not evidence that the investigation process has been thorough, providing appropriate access to source information that would support its rejection of claims made by Revolution regarding CCI charges that are at issue in this proceeding. The already tested and undisputed record regarding AT&T's dispute resolution process regarding CCI charges the first time that Revolution challenged CCI charges and AT&T rejected its disputes is that AT&T admitted to a 100% failure rate in PUCO Case No. 02-1957-TP-UNC, that AT&T had not fixed its faulty billing system until August 2005, and that AT&T admitted in discovery that it was experiencing billing errors the entire time in question. AT&T, purportedly, has offered the unauthenticated statement of its employees' commitment to carefulness and honesty to assure the PUCO that AT&T's billing practices are sound and

[15] Revolution Exhibit 5, Christensen depo. p. 32 l. 23 – p. 36 l. 8, pg. 36 l. 22 – p. 38 l. 15.
[16] AT&T Brief, p. 18.

accurate. In actuality, Revolution contends that it has shown that AT&T's statements in its Brief are not credible.

AT&T's Brief from pages 20-25 discusses how a technician receives the order to perform a manual service. This testimony appears to be offered to show that it is "possible" for a technician to complete his job "within minutes." While a technician's job may *possibly* only take minutes, it does not explain away that according to AT&T a mechanized-electronic pass through connection [no human intervention] is four hours;[17] however, AT&T's expert said any connection completed the same day is also "safe to assume that the network pieces were all in place."[18] AT&T has given a possibility for a technician's job being accomplished in minutes, and yet gave no evidence of this ever actually happening, but AT&T did not explain how that could happen when the average time for an electronic connection was four hours to an entire day. Again, AT&T stretches the boundaries of credibility with testimony that is inconsistent with AT&T's other witnesses.

In concluding AT&T's factual section on CCI, AT&T explains the role of the central office technician. Again, this was another unnecessary dissertation on irrelevant AT&T practices. However, it did provide several examples of how and why a technician can not perform his duties in the same amount of time as the electronic service.

AT&T's defense [page 43-44] is based upon the supposition that Revolution "failed to demonstrate that AT&T Ohio has billed for work or services not completed by a network technician." In fact, Revolution has shown that AT&T's services were not completed by a network technician and AT&T's can not rebut Revolution's evidence because AT&T has destroyed the records.

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[17] Revolution Exhibit 5, Christensen depo. p. 24 l. 19- p. 25 l. 2.
[18] Id. at p. 19 l. 5-8.

Revolution has met its burden of showing AT&T's CCI billing is faulty and untrustworthy. Namely, Revolution has shown that AT&T has admitted to a 100% failure rate in PUCO Case No. 02-1957-TP-UNC related to CCI billing, a continued and admitted failure by AT&T billing in current discovery, and that AT&T's faulty billing system remained in service until August 2005. Further, Revolution gave AT&T an opportunity to prove, on a sampling basis, that AT&T's claims had merit. Revolution sent AT&T a sample of ten disputed orders from the August 2005 bill, the last month in dispute. Revolution asked AT&T the following:

a) The name of each technician who performed work on the order, with a notation of which portion of the work that technician performed;
b) the job title and job description of each technician who performed work on the order;
c) the nature of all work performed on the order;
d) an explanation of how the work was performed;
e) the time it took the technician to complete the work, once work was begun after the order was received;
f) the location(s) (including street address and room number or other room identifier) where each portion of the work was performed;
g) the location(s) (including street address and room number or other room identifier) of each technician during the time each phase of the work was performed;
h) if a dispatch occurred, the location from which each technician was dispatched, and the location to which the technician was dispatched; and
i) a list of all other orders filled/worked on by that technician on the day referenced by the order.[19]

AT&T responded by crediting Revolution with two more credits but *nothing further of substance*.[20] AT&T had its opportunities to justify its billing and it could not.

The failure from this point is AT&T's failure to retain records beyond a few weeks and to be fair to contracted CLECs if billing disputes arise over AT&T's untrustworthy billing.

[19] Revolution Exhibit 7, Litke test. p. 5.
[20] *Id.*

IV. TT27

AT&T addresses the TT27 issue in pages 30-41 of its Brief. AT&T admits that the TT27 traffic was not billed timely because of a problem with AT&T's billing system. In particular, the change to CABS billing allegedly allowed AT&T to bill previously unbilled charges.

AT&T begins by asserting that Revolution has failed to put into evidence documents concerning OBF compliance by AT&T. According to AT&T's own witnesses Scott McPhee, AT&T monthly bills are required to be in OBF compliant format.[21] AT&T witness McPhee went on to identify the four elements for OBF compliance:

1) minutes of transport;

2) number of calls that transited [AT&T's] network;

3) rate per minute for the transport; and,

4) the identity of the end office where the traffic terminated.[22]

Documentation of the necessity of OBF compliant billing is unnecessary when the opposing party provides the evidence.

AT&T, through its witness, makes a preposterous claim: "Revolution has not disputed the veracity of the actual usage which AT&T has billed it."[23] Revolution has made the claim that it cannot verify AT&T's billing unless AT&T provides its bill to Revolution in the proper OBF manner so the accuracy and veracity of a bill can be tested. It is, frankly, absurd for AT&T to claim Revolution has not challenged the veracity of the billing claim when it is impossible for Revolution to even undertake an investigation of the claim because AT&T has destroyed the very information needed to determine the bill's veracity. AT&T tries to sell this issue as a mere

[21] AT&T Ohio Exhibit 4,McPhee test. depo. p. 23 l. 17-21.
[22] Revolution Exhibit 7, Howard test. p. 2; Id; Revolution Exhibit 4, McPhee depo. p. 16 l. 24- p. 17. l. 9; p. 17 l. 14 – p. 18 l. 2.
[23] Brief p. 31.

technicality by Revolution, when it is anything but. AT&T provided Revolution with a single item debit of $207,000, and nothing more.

AT&T then argues that even though the billing is not OBF compliant the DUF has this information. To support this claim, AT&T asserts that Revolution had the DUF at the time the two years worth of TT27 billing was delivered. Revolution has never stated that it has or had the DUF at that time; that is a complete construct by AT&T and its witnesses.

The importance to AT&T of this DUF argument is so it can say Revolution had the data, though not in a bill. As discussed in Revolution's brief, and via the testimony of an AT&T witness, the DUF record is not a bill; it is totally separate from the bill.[24] Nevertheless, AT&T's argument is that Revolution had the DUF and Revolution could check the TT27 charges against the DUF. The problem with AT&T's "logic" is that the TT27 charges were billed from a few months to over two years in arrears! AT&T dumped $207,770.90 worth of two years billing in one bill and then expected Revolution to examine the bills against the DUF, with the un-proved assertion Revolution had the DUF, or that Revolution had a duty to even keep the DUF beyond a few months. It is an established fact that AT&T's DUF records no longer exist; as of October 7, 2004, [one month after back-billing $207,000 in TT27 charges].AT&T stated "[AT&T] can not provide a re-creation of the DUF records for the periods in question related to the backbilling due to the retention limitations."[25] At the very least, Revolution should be entitled to the same treatment AT&T expects of itself.

AT&T claims that "AT&T provided Revolution with sufficient information to allow Revolution to verify the backbilled charges for TT27." It is undisputed that AT&T did not provide Revolution with an OBF compliant bill as required by the ICA; it is undisputed that

[24] Revolution Exhibit 4, McPhee depo. p. 19 l. 2-13.
[25] Revolution Exhibit 8, Tab 2; Email from Cathy Wyban, AT&T, October 7, 2204.

AT&T did not bill the TT27 monthly as required by the ICA; it is undisputed that there is no evidence that Revolution retained the DUF any longer than AT&T; and it is undisputed that AT&T dumped two years worth of billing on Revolution, without any warning or back-up data to support the bill. Further, Revolution would ask the PUCO to take judicial notice that the traffic at issue is billed in the thousandths of a cent and that it is an onerous duty to confirm over $193,000 in charges at a thousandths of a cent per charge. Like the CCI issue, the TT27 charges have to be reviewed. AT&T has admitted that even it found and credited to Revolution a $14,615.46 error in its billings to Revolution for TT27 charges that had previously been billed to Revolution as TT26 charges.[26]

We have already reviewed several issues that are not as clear as AT&T suggests; there is another one. AT&T makes the true claim that Revolution is the only CLEC to file a formal complaint concerning TT27 backbilling. But, AT&T fails to tell the whole story. Without elaborating, AT&T witness McPhee reported that there are several other CLECs that have challenged AT&T's TT27 backbilling and have refused to pay the billing.[27]

As for the ICA, AT&T states that it is silent on the issue of backbilling.[28] Apparently, that did not deter AT&T from going forward with its demand for payment of TT27 charges; AT&T claims it looked to other Midwest states and pursued the TT27 delinquent billing.[29] What analysis AT&T leaves out from the ICA is that the ICA is not silent on billing; in fact, it is quite specific, the ICA states billing is to be monthly.[30] If billing is required to be handled monthly, then backbilling does not have to be addressed, thus explaining the ICA's silence.

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[26] Brief p. 37.
[27] Revolution Exhibit 4, McPhee depo p. 26 l. 1-19.
[28] Brief p. 38.
[29] *Id.*
[30] ICA para. 8.1.

AT&T even argues that the ICA does not apply to it. Specifically, AT&T claims that OBF compliant bills are optional and not a "violation" to disregard the format. However, as we have shown, while AT&T claims it can be flippant with the application of OBF compliance with its bills, AT&T would not pay a non-compliant OBF bill, in fact, refusing same from Revolution.[31] Again, we see another example of AT&T expecting letter perfect adherence by CLEC's but AT&T gets to choose what it follows.

Revolution strongly objects to and asks the PUCO to disregard the last paragraph of page 40 and the first paragraph of page 41 wherein AT&T witness Scott McPhee is providing legal opinions. Nothing in AT&T's submissions in this case indicate that Mr. McPhee is an attorney and his legal conclusions in the cited pages are precluded as the practice of law without a license and well beyond the competence of Mr. McPhee.[32]

In conclusion, AT&T's argument is that it is not held to OBF standards and that Revolution did not put these standards into evidence. As Revolution has shown, AT&T's own witnesses have provided the testimony that bills are to be OBF compliant and AT&T has identified the OBF standards. AT&T goes on to claim there is no dispute that the TT27 traffic was generated by Revolution's customers. In reality, that is the whole reason for the claim. Revolution has no way of determining if the traffic is Revolution's, another CLEC's, previously billed and paid charges, or in error.

Despite AT&T's best efforts to color this issue as just a technicality; it is not. AT&T is playing fast and loose with its duties and obligations that it would not let a CLEC get away with. Revolution has met its burden of showing that the billing was not in proper format, that

[31] Revolution Exhibit 8, Tab 9, Emails from Sharon Litke, August 10 & 15, 2005.
[32] Revolution Exhibit 4, McPhee depo p. 15 l. 13-24.

Revolution did not have the means to verify the traffic, that the ICA requires monthly billing and does not provide for backbilling, and that the TT27 charges are time barred.

V. Late Charges

The PUCO should order that AT&T may not assess against and collect the late payment fee from a CLEC that is provided for in the AT&T interconnection agreement (and accumulating against Revolution at this time) when the AT&T charges giving rise to the late payment fee cannot be verified by the interconnecting CLEC, such as Revolution in this case, because of AT&T's inability to provide an OBF-compliant bill and/or any necessary information for the CLEC to verify the charges as being correct.

AT&T, in its initial brief, states that it is entitled to the amounts it has billed Revolution that are the subject of this proceeding and the late fees that have accumulated from the beginning of the dispute. Apparently, as Revolution understands from AT&T, the late fees tallied by AT&T to date are well in excess of $100,000 on approximately $360,000 in charges to Revolution. Furthermore, there will be the additional late fees associated with the time it takes to obtain a PUCO order, to file applications for rehearing, and to obtain a PUCO order on rehearing. If AT&T wishes to appeal the PUCO's decision, it can continue to assess late fees against Revolution during the pendency of the appeal. The final tally of late fees could be many times more than the original amount of the AT&T charges initially billed to Revolution. Under such a scenario, if Revolution wishes to appeal the PUCO's decision, even though it may have good cause, it may not be able to afford to do so because of the continuing imposition of late payment charges.

Given the unfairness of the dispute resolution process as described in Revolution's Initial and now in its Reply Brief, the imposition of a late payment charge by AT&T on Revolution for charges that are the subject of a *bona fide* dispute would be unjust, unreasonable, unconscionable and against established state and federal policy. Furthermore, permitting the assessment of such a charge by AT&T would undoubtedly have the effect of discouraging CLECs from availing

themselves of both the ICA's dispute resolution process and the PUCO's formal complaint process when they believe that AT&T is billing them incorrectly. The late payment charge is simply a penalty assessed against CLECs who have the temerity to challenge their AT&T charges rather than simply taking AT&T's assurances that the charges are correct. In this case, the PUCO should, at the very least, order that AT&T not assess any additional late payment charges to Revolution and order that AT&T credit Revolution for any late payment charges that AT&T has assessed against Revolution.

Revolution, finding itself in a "no-win" situation under AT&T's application of the grossly inequitable terms of the ICA's dispute resolution process, has brought before the PUCO a formal complaint against AT&T. In its March 29, 2006 entry, the PUCO essentially supplanted the ICA's dispute resolution process and set forth the terms and conditions by which this matter was to be resolved.[33] Under these terms and conditions, the PUCO suspended the actions AT&T would normally take under the terms and conditions of the ICA in pursuit of unpaid charges.[34] Likewise, the PUCO should suspend AT&T's ability to impose any late payment charges against Revolution, as this is simply another means whereby AT&T may pressure Revolution to pay the disputed charges. Should the PUCO not prohibit AT&T from assessing late payment charges associated with charges that are the subject of this *bona fide* dispute, its decision is sure to have a chilling effect on the telecommunications marketplace as CLECs will be reluctant to dispute, and bring before the PUCO, questionable charges assessed by AT&T, which by themselves they cannot verify, out of fear of being penalized through the imposition of AT&T's late payment charge.

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[33] Case No. 06-427-TP-CSS, Entry, March 29, 2006, at p. 3.

[34] *Id.* The actions suspended by the PUCO include pursuing any collections actions against Revolution, disconnecting any Revolution services and refusing the provisioning of new services related to the issues set forth in the complaint.

If the PUCO allows AT&T to assess late payment charges against Revolution, its decision will contradict ten years of established telecommunications policy at both the federal and state level. Section 257 of the 1996 Telecommunications Act ("Act") sets forth the national policy with regard to market barriers that may inhibit competition in the telecommunications marketplace. Specifically, the Act charges the Federal Communications Commission with eliminating through regulations market entry barriers for small providers of telecommunications services.[35] In carrying out its duties, the Act charges the FCC with promoting the policies and purposes of the Act favoring a "diversity of media voices."[36] Ohio law reflects the policy set forth in the Act.[37]

If any provision of the ICA stifles or in any way inhibits competition in the telecommunications marketplace, the PUCO should find that it contravenes both state and federal policy. Here, the late payment charge has such an effect. The assessment of the late payment charge for charges that are the subject of a *bona fide* dispute penalizes a CLEC that questions its AT&T charges, even if it places the amount of these charges in escrow.[38] Accordingly, a CLEC will be less likely to dispute questionable charges billed by AT&T and, feeling that it has no recourse through the ICA, will more likely pay these charges as a cost of doing business, or worse, will avoid entering or leave the market because it feels it cannot compete fairly with AT&T on the equal footing mandated by the Act.

The CLEC's situation is further exacerbated if it is not permitted to formally bring its dispute before the PUCO without fear of being charged late payment charges during the pendency of the PUCO's proceeding and any appeals to the Ohio Supreme Court. Under such

[35] *See* 47 U.S.C. 257(a).
[36] *See* 47 U.S.C. 257(b).
[37] *See* R.C. 4927.02(A)(4) which states that it is the policy of the state of Ohio to promote diversity and options in the supply of public telecommunications services.
[38] *See* ICA para. 8.5.

circumstance, CLECs cannot fairly compete with AT&T as they are essentially at the mercy of AT&T's billing system. Essentially, AT&T makes the rules and the CLECs have very little leverage to challenge these rules. Such an environment does not foster competition and contravenes established state and federal telecommunications policy. As such, the PUCO should prohibit AT&T from assessing late payment charges for any charges that are at issue in this complaint case.

The dispute resolution process as set forth in the ICA, which is essentially a take-it-or-leave-it proposition, is a flawed process that, when applied to the instant case, produces grossly unfair and unjust results. Following this process, a CLEC wishing to dispute charges assessed by AT&T must, prior to the bill due date, provide AT&T with written notice of the amounts in dispute.[39] The CLEC must then provide evidence to AT&T that it has either paid the disputed amount to AT&T or has placed this amount into an interest-bearing escrow account not later than twenty-nine (29) days following the bill due date, or the CLEC will be deemed to have waived its right to dispute the charges in question.[40] As indicated above, the disputed amount placed in escrow is then subject to continually accruing late payment charges.

Following receipt of the CLEC's notice of dispute, it becomes AT&T's responsibility to endeavor at the first level of dispute resolution to resolve the dispute within thirty (30) to sixty (60) days.[41] As previously shown in Revolution's Initial Brief and now in its Reply Brief, the AT&T personnel assigned to these billing disputes do not have access to the fundamental billing records necessary to resolve such disputes. If, at this first level of dispute resolution, AT&T does not resolve the dispute in the CLEC's favor, the CLEC may escalate the dispute to the next level of dispute resolution. By this time, however, the CLEC is generally at least two months beyond

[39] ICA para. 8.4.
[40] ICA para. 10.4.1.
[41] ICA para. 10.4.2.

the bill due date. At this point, the CLEC finds that AT&T has not maintained detailed records beyond forty-five days following the bill due date. Under this scenario, a CLEC – and in this case, Revolution – must then attempt to prove that it has been billed incorrectly with only the very bills that are in dispute as evidence. To further complicate the dizzying circularity to which the CLEC is subjected, these bills are not OBF compliant, and, as such, cannot be used by the CLEC to verify an incorrect billing. It is hard to imagine a more blatantly unfair, unjust and unreasonable process that is stacked against the CLEC from the outset.

Not only does the ICA's dispute resolution process place a CLEC in an unwinnable position when disputing AT&T's charges, it goes even further by penalizing any CLEC that has availed itself of the ICA's dispute resolution process by the assessment of late payment charges that accumulate throughout whatever period of time that it takes to resolve a *bona fide* dispute, including throughout the term of an arbitration provided for in paragraph 10.7 of the ICA.[42] And apparently, according to AT&T, the ICA permits the assessment of late payment charges even when a CLEC has formally brought the dispute before the PUCO as Revolution has done in this case. This same process, however, grants AT&T, as the recipient of the late payment charge, what can only be called a windfall. In the instant proceeding, AT&T asserts that it is entitled to collect and Revolution is obligated to pay in excess of $100,000 in late payment charges. Such disparate treatment of Revolution under the ICA's dispute resolution process can only be described as manifestly unjust and unreasonable.

According to paragraph 8.4.4.1 of the ICA, disputed charges must be placed in an interest-bearing account. Furthermore, pursuant to paragraph 8.7.4, if the dispute is resolved in

[42] Paragraph 8.5 of the ICA states that disputed amounts that have been placed in escrow shall be subject to a late payment charge as set forth in paragraph 8.8.1, which includes throughout the arbitration until a final decision is rendered.

favor of the Billing Party,[43] the Non-Paying Party must pay the difference between the amount of accrued interest that the Billing Party received from the escrow disbursement and the amount of the late payment charge. In other words, if the interest accrued on an escrow account does not meet or exceed the late payment charges, as calculated by AT&T, AT&T may collect the difference. If the dispute is resolved in favor of the CLEC, though, the CLEC is only entitled to the return of the funds placed into escrow and any accrued interest and will have the late payment charge "forgiven" by AT&T.[44] Unlike AT&T, however, the CLEC does not receive anything from the other party above and beyond the accrued interest on the escrowed amount. Such a perverse outcome can only be described as a penalty against the CLEC and windfall for AT&T. It has long been settled that, in the context of enforcing private contracts such as the ICA, the law abhors a penalty.[45] Revolution urges the PUCO to find that the late payment charge is nothing more than AT&T's imposing a penalty upon Revolution and reject it as such – and especially in this case in which AT&T failed to provide Revolution with any evidence that it could use to even reasonably verify the substantial charges billed.[46]

Especially egregious and abhorrent is the fact that AT&T is apparently assessing late payment charges against Revolution during the pendency of this PUCO proceeding. A CLEC must be able to bring material questions regarding the interconnection agreement's essential meaning and any resulting non-complying charges before the PUCO without fear of being

[43] The ICA uses the terms "Billing Party" and "Non-Paying Party" rather that AT&T and Revolution. However, since the Billing Party is the party selling and the Non-Paying Party is the party buying resale services and network elements, these terms are clearly being used euphemistically for AT&T and Revolution respectively.

[44] ICA para. 8.7.1. If the CLEC prevails, however, there is no real "forgiveness" by AT&T as there is effectively a finding that the late payment charges were not justified in the first place.

[45] *See American Financial Leasing & Service Co. v. Miller* (1974), 41 Ohio App.2d 69, 76, 322 N.E.2d 149.

[46] AT&T put Revolution at unreasonable business risk. It insists upon Revolution's marching through the steps of the dispute resolution process when it refuses to provide an OBF-compliant bill or any other form of information necessary for Revolution to perform a verification of the billed charges. Revolution has no ability to determine the likely outcome, as a business matter, of paying the bill or availing itself of the dispute resolution process. Revolution is forced to play a type of Russian roulette with AT&T saying in the background, "Pay the bill. Trust us – it's right."

subjected to AT&T's running late payment meter, especially in cases, such as the instant case, in which AT&T has been unable to verify its billing. Anything less essentially puts the CLEC in the position of having to pay whatever AT&T claims is correct as the cost of doing business. The CLEC will be forced to make the unpleasant business decision to forego pursuing a complaint against AT&T out of fear that it simply cannot afford to be wrong, even though AT&T was unable to verify its billing through the dispute resolution process. Otherwise, the risk to which the CLEC is exposed is too great. Such an outcome is certainly not in keeping with the long established telecommunications' policy of promoting competition and a level playing field for all market participants. As such, at a threshold level, Revolution strongly believes that the PUCO cannot permit AT&T to assess the late payment charge against it during the pendency of this case and any appeals and respectfully urges the PUCO, at a minimum, to order AT&T to not assess this charge while this case is pending.

In terms of the relative burdens born by AT&T and a CLEC during the course of the dispute resolution process, the CLEC is much more likely to bear a greater burden than AT&T. In the instant case, Revolution certainly bears a greater burden than AT&T. Once the disputed funds were placed in escrow, neither Revolution nor AT&T had the benefit of these funds. Although Revolution will receive accrued interest if the dispute is resolved in its favor, lack of access to the disputed funds has a far more detrimental impact on Revolution than it does on a corporate giant such as AT&T. Unlike AT&T, Revolution is likely to need these funds for its daily operating expenses during the duration of the resolution process. Additionally, Revolution is the only party that has actually paid money out-of-pocket into the escrow account. From the outset, then, Revolution has disproportionately born the cost, and as we have found, the risk of the dispute resolution process, yet AT&T is the only party that is permitted to assess a penalty in

the form of the late payment charge should the dispute be resolved in its favor. Again, the disparate nature of the process is clearly evident. No CLEC can fairly compete on such an unlevel playing field where the parties are treated so inequitably.

At its very essence, the ICA's dispute resolution process is grossly unfair. It is a process under which AT&T makes the rules and CLECs like Revolution find themselves in "no-win" situations. In doing so, the process violates established state and federal telecommunications policy and can only have a chilling effect on all CLECs' willingness to challenge questionable AT&T charges. Under the dispute resolution process, a CLEC is required to disproportionately cover the cost of the process, but is unable to obtain adequate records from AT&T to verify its billing during the course of this process. Unable to prove the incorrect billing, the CLEC is then subjected to accruing late payment charges even though a *bona fide* dispute exists. If the dispute is resolved in AT&T's favor, AT&T not only receives the disputed amount and compensation for the lost time-value of the disputed charges, but also receives a windfall in the form of a punitive accrued late payment charges. If, on the other hand, the CLEC is somehow able to prevail through the AT&T's dispute resolution process, which is an unlikely proposition to say the least, AT&T is required to pay nothing. All that AT&T is required to do is credit the disputed charges and late payment charges that should never have been assessed to the CLEC in the first place. Revolution respectfully, yet strongly, urges the PUCO to see the dispute resolution process for the grossly unfair, unjust and unreasonable process that it is and order AT&T to refrain from assessing any additional late payment charges to Revolution as well as credit Revolution for all late payment charges that AT&T has previously assessed against Revolution.

VI. Revolution's Conclusion

As set out in Revolution's Initial Brief and this Reply, this is a simple case within the context of AT&T's efforts to collect on its errors. The first and foremost fact is that these two collection contests began with AT&T's errors and faulty billing systems. AT&T does not come to the PUCO with clean hands.

The CCI dispute began with AT&T's error-riddled billing system that, wittingly or unwittingly, consistently, systematically, and pervasively billed to Revolution CCI charges as though performed by a technician when, in fact, they were not. As Revolution has shown, and without contest by AT&T, AT&T's CCI billing system was plagued with problems that left the billings highly untrustworthy.

The TT27 dispute began with AT&T's admission that the TT27 billing system was flawed. According to AT&T, the TT27 traffic was not being captured and billed. So AT&T changed billing systems to a CABS system, which identified unbilled elements theoretically billable to CLECs. To remedy this situation, AT&T sent Revolution a line item debit of over $207,000. Revolution asked for back-up to support this unexpected and expensive new charge because AT&T just said, "pay it." Specifically, as AT&T has complained, Revolution asked AT&T to provide the TT27 bill in an OBF format to verify the charges; AT&T refused. It does not deny that it refused.

AT&T had not initially asked the PUCO to order Revolution to pay the bill amounts, but asked, rather, for a finding that AT&T' billing practices are just and reasonable [although its Brief now asks for money too]. There is a lot at stake, including whether AT&T will have any duty to deal with CLECs fairly. The first issue is AT&T's clamoring for the imposition of full, prompt and unequivocal impoundment of a disputing CLEC's funds into an escrow account

when a bill dispute is raised. As we have shown, this case is a *bona fide* dispute with AT&T over whether AT&T's CCI charges and TT27 charges are legitimate. It must be remembered, there is no showing that any of the bills are legitimate; all of the bills have been shown to be highly untrustworthy; AT&T has destroyed the records that actually contain the data that would, were it available, provide ready evidence of AT&T's claims for payment; AT&T has issued numerous credits because the billing is faulty; and AT&T's dispute process does not review the bills for accuracy—it reviews the first reviewer's actions.

AT&T has argued that Revolution breached the ICA by not immediately escrowing some *$360,000 in alleged bills by AT&T. This is important to note; AT&T has neither actual proof* that the TT27 charges are accurate nor any actual proof that technicians worked on CCI connections warranting the higher per order charge. And, with respect to the TT27 charges, the ICA does not contemplate current billing of two- year old charges. While AT&T argued the ICA's silence is *carte blanche* to bill backbilled charges as it pleases, it should be the other way around if the PUCO is going to read into the ICA the intent and purpose of the law to promote an open and competitive market place. The ICA's silence means that AT&T's attempted collection of unsubstantiated two-year old bills [recall the ICA states "bill monthly"] is not permissible under the ICA. And by the express terms of the ICA, amounts billed that are two-years old or older are time barred by the ICA and by federal law.

If AT&T wins this argument, then Ohio's telecommunications market will likely become much smaller as AT&T finds more billing and older billing, without the necessity of proof, and requires CLECs to put up massive and financially devastating escrow payments. Even if the CLEC eventually wins, there is no harm to corporate giant AT&T but a modest CLEC may never

recover from the financial harm that AT&T's speculative billing and defending its right in disputing such billings can cause.

The other important issue to all CLECs is the burden of proving billing disputes with AT&T. Here, AT&T disconnected Revolution's service in March 2006, despite Revolution's being current in its payments to AT&T on everything but the disputed amounts, and forced Revolution to file this action if it was to obtain any meaningful recourse. By forcing Revolution to file, AT&T, allegedly, preserved its argument that Revolution has the burden of proof, which in this case means proving AT&T's bills are wrong. Typically, the collecting party, AT&T, would have the initial burden of proving the legitimacy and accuracy of its billing before having a right to collect. But, as the PUCO has seen, AT&T is, again, trying to re-write the rules in its favor. The reason AT&T wants the rules changed is because AT&T cannot prove the legitimacy and accuracy of its highly suspect billing.

Finally, Revolution reiterates its argument made in its Initial Brief that one issue that is squarely under the terms of the interconnection agreement as well as the law is the following: even if the PUCO were to find that AT&T's billings to Revolution can be verified, AT&T is time-barred from collecting charges that it has failed to bill and failed to attempt to collect by initiating "actions at law" regarding CCI and TT27 charges billed to Revolution within two years from the time the cause of action accrues, and not after." AT&T has never initiated any "action at law...for recovery of their lawful charges, or any part thereof...within two years from the time

the cause of action" regarding the CCI and the TT27 accrued.[47]

As Revolution has previously argued in its Initial Brief and AT&T does not dispute, AT&T has destroyed all of the source data records that would show if the TT27 traffic or the billing of technician labor in CCI charges was proper. Now, AT&T's fallback is likely to argue that their document retention policies are PUCO approved; which is all well and good, but if AT&T is going to use its destruction of records as a sword, then the PUCO should consider whether that is fair in a billing dispute. In any other setting, AT&T would have to prove its case. It is time AT&T gets the message that **it is to be treated like everyone else and it is to treat everyone else as it expects to be treated in ways that actually allow for a level playing field and the growth of real competition in the telecommunications market.**

Based on the foregoing, Revolution respectfully urges the PUCO to find

(1) that AT&T's billings to Revolution at issue in this proceeding are void;

(2) that AT&T's charges to Revolution at issue in this proceeding, including alleged accruing interest on the amount in dispute, be immediately credited in total back to Revolution, without further liability to Revolution;

(3) that in connection with the Revolution's challenges to the improper billings by AT&T, Revolution acted properly under the terms of its ICA and under the law and order AT&T to continue to provide interconnection services to Revolution pursuant to the ICA and the law;

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[47] *See* Sec. 415, [47 U.S.C. §415], LIMITATIONS AS TO ACTIONS: All actions at law by carriers for recovery of their lawful charges, or any part thereof, shall be begun, within two years from the time the cause of action accrues, and not after. *See also* ICA at section 10.1.

10.1 Finality of Disputes

> 10.1.1 Except as otherwise specifically provided for in this agreement, no claim [means any pending or threatened claim, action, proceeding or suit] may be brought for any dispute arising from this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with exercise of due care and attention.

(4) that the amount in the escrow account set up by agreement of AT&T and Revolution in connection with this proceeding is due and payable back to Revolution, including any accrued interest on the account, immediately upon order of the PUCO;

(5) that AT&T's provision of interconnection service in connection with the issues in this proceeding, including its disconnection of Revolution's service in March 2006, was unjust and unreasonable and violated the terms of the ICA and the applicable law and policy of the PUCO; and

(6) that the "pay and dispute" provision of the ICA, including the obligation to escrow amounts in dispute, is void and to be stricken from the ICA given (1) AT&T's chronic abuse of the "pay and dispute" provision by its chronic failure to meet its obligation to bill accurately and to provide substantiation of billings in its dealings with Revolution; and (2) the federal law and public policy supporting the Commission's rejection of "pay and dispute" provisions.

Revolution asks the PUCO to award Revolution such other and further relief to which Revolution may be entitled.

Respectfully submitted,

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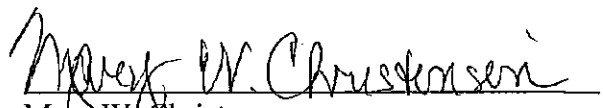
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply Brief of Revolution Communications Company, Ltd. in PUCO Case No. 06-427-TP-CSS has been served by e-mail and hand delivery to Jon F. Kelly, Esq., 150 East Gay Street, Room 4-A, Columbus OH 43215 this 6th day of December, 2007.



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