BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

The Commission, considering the prefiled testimony, discovery responses, exhibits, and other documents considered as part of the record in this proceeding, hereby issues its opinion and order.

APPEARANCES:

Christensen, Christensen, Donchatz, Kettlewell & Owens, LLP, 100 East Campus View Blvd., Suite 360, Columbus, Ohio 43235, by Ms. Mary W. Christensen and Friedman & Feiger, LLP, 5301 Spring Valley Road, Suite 200, Dallas, Texas 75254, by Mr. Steven R. Shaver, on behalf of Revolution Communications, Ltd.

Mr. Jon F. Kelly, 150 East Gay Street, Columbus, Ohio 43215, on behalf of AT&T Ohio.

PROCEDURAL HISTORY:

On March 15, 2006, Revolution Communications, Ltd. (Revolution) filed a complaint against AT&T Ohio (AT&T). Revolution included with its complaint a motion for an immediate order to bar AT&T from suspending Revolution's services and to bar AT&T from refusing to provision new services. Revolution alleged that AT&T improperly billed labor charges for provisioning new unbundled network element platform (UNE-P) services. In a second count of its complaint, Revolution alleged that AT&T improperly backbilled for Traffic Type 27 (TT27).

AT&T filed an answer on March 20, 2006. In addition, AT&T filed a motion to dismiss or, in the alternative, a memorandum contra Revolution's motion for a cease and desist order.

In response to AT&T's motion to dismiss, Revolution filed a memorandum contra on March 21, 2006. With its memorandum contra, Revolution included a motion for an immediate order to prevent AT&T from terminating Revolution's ability to provide service to new and existing customers. Moreover, Revolution sought to thwart any

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collection actions by AT&T and to prevent AT&T from disconnecting Revolution's services. AT&T filed a reply to Revolution's memorandum contra on March 24, 2006.

The Office of the Consumers' Counsel (OCC) filed a letter on March 27, 2006, expressing concern for Revolution's customers. OCC pointed out that some customers prepay for local service. Because AT&T stopped processing new service orders submitted by Revolution, some customers may be denied service for which they have paid. Moreover, because many of the customers are credit challenged or have had problems maintaining service with AT&T, they may have no local service alternatives. OCC, therefore, urged the Commission to order AT&T to continue processing new service orders from Revolution. In the alternative, OCC recommends that the Commission issue an order that would release Revolution from the obligation of requiring the collection of subscriber payments until AT&T resumes processing new service orders from Revolution. Finally, the OCC suggests that Minimum Telephone Service Standards (MTSS) credits be given to those customers who have experienced delays in installation or repairs.

To provide the parties an opportunity to negotiate a settlement, the attorney examiner issued an entry on March 27, 2006, scheduling a mediated settlement conference. The attorney examiner scheduled the conference for April 3, 2006. Prior to mediation, the Commission issued an entry on March 29, 2006, directing Revolution to deposit $100,000 in an escrow account. In addition, AT&T, for its part, was directed to suspend any collection activities and to cease service disconnections. Furthermore, the Commission directed AT&T to provision new service orders insofar as the service orders relate to the issues in the complaint. The Commission stated that this order would remain in effect until the Commission renders a decision. Finally, the Commission directed that this matter proceed expeditiously to mediation. Upon request of the complainant and the consent of the respondent, the attorney examiner issued an entry on March 30, 2006, rescheduling the settlement conference for April 4, 2006. The parties met as scheduled but did not resolve the issues raised by the complaint.

On June 16, 2006, AT&T filed a motion for an order to address Revolution's failure to comply with the Commission's March 29, 2006, entry. In its motion, AT&T stated that Revolution failed to fund an escrow account with $100,000. In its June 30, 2006, response, Revolution alleged that it had attempted in good faith to establish a formal escrow account. Encountering difficulties with banks, Revolution states that it set aside $100,000 in a segregated account with AT&T designated as one of the co-signors. In a July 7, 2006, reply, AT&T stated that it was unaware that it was a co-signor on an account. Notwithstanding that the parties were close to finalizing an escrow arrangement, AT&T highlighted Revolution's failure to adhere to the Commission's orders.

By entry issued July 18, 2006, the attorney examiner scheduled this matter for a hearing to occur on October 19, 2006. Pursuant to the schedule set forth in the entry, Revolution filed direct testimony on September 15, 2006. AT&T filed rebuttal testimony on September 29, 2006.

Upon request of counsel for Revolution and consent of counsel for AT&T, the attorney examiner continued the hearing by entry issued on October 18, 2006. The attorney examiner changed the date of the hearing from October 19, 2006, to December 14, 2006. The attorney examiner also extended the time for Revolution to file its reply testimony from October 13, 2006, to October 20, 2006.

On December 4, 2006, the attorney examiner issued an entry changing the hearing date from December 14, 2006, to January 18, 2007. On January 17, 2007, to allow for renewed negotiations with newly retained counsel for Revolution, the parties filed a joint request for an extension of time. By entry issued January 17, 2007, the attorney examiner continued the hearing indefinitely.

On June 25, 2007, AT&T filed a motion to set a hearing date and requested an expedited ruling. AT&T urged the Commission to schedule a hearing beginning July 31, 2007. On July 2, 2007, Revolution filed a letter stating that its counsel would not be available for hearing on July 31, 2007. After consulting with the parties, the attorney examiner issued an entry on August 17, 2007, which scheduled this matter for a hearing to take place on September 20, 2007. On September 14, 2007, the parties filed a stipulation agreeing to submit the case to the Commission based upon a stipulated record. The parties further agreed to argue the merits of their respective positions by briefs. On September 19, 2007, the attorney examiner canceled the hearing and adopted in its entirety the stipulation proposed by the parties.

The stipulation scheduled the filing of the documents to be considered as the record, the filing of briefs, and the filing of reply briefs. The parties agreed to file documents for the record on October 1, 2007. The parties further agreed to file initial briefs on November 7, 2007, and reply briefs on December 5, 2007.

On October 2, 2007, Revolution sought leave to file the record documents that were scheduled to be filed on October 1, 2007. Considering the date, Revolution sought an expedited ruling. Revolution explained that the delay was caused by clerical error and a delay in shipping. Revolution stated that there is no prejudice to AT&T because AT&T already possessed a copy of the materials. Finding no prejudice to a party, objection from AT&T, or undue delay, the motion should be granted.

On October 12, 2007, the parties filed a joint motion requesting permission to alter the procedure set forth in the September 19, 2007, entry. The parties explained that a computer information disk contains numerous documents of relevance to this proceeding. Some of the documents are considered confidential. The parties request, in lieu of filing the disk, that they be permitted to file documents from the disk only to the extent that they are referenced by either party in brief. The parties agree to protect any references considered confidential in accordance with the Commission's rules. On October 24, 2007, the attorney examiner issued an entry granting the joint motion.

On November 5, 2007, Revolution filed a motion requesting that it be granted an extension of time to file its initial brief. On November 13, 2007, the parties filed their initial briefs. Because there was no objection or undue delay, Revolution's motion for an extension of time should be granted.

On December 6, 2007, Revolution filed a motion to extend the time for filing its reply brief and requested an expedited ruling. In its motion, Revolution acknowledged that reply briefs were due to be filed on December 5, 2007. Counsel for Revolution explained that winter storm conditions prevented the timely filing of the reply brief. Counsel requested and received consent from AT&T for a one-day extension of time to file reply briefs. Counsel for Revolution also notified the Commission's legal director. In accordance with Revolution's request and AT&T's consent, Revolution and AT&T filed their reply briefs on December 6, 2007. Finding no prejudice or undue delay, the request for an extension of time to file reply briefs should be granted.

On December 6, 2007, in addition to its reply brief, AT&T filed confidential documents and a motion for protective order. The purpose of the motion for protective order is to maintain the confidentiality of documents filed as attachments to its reply brief. AT&T explained that the attachments consist of records on specific lines in service. The records disclose addresses, customer names, or other confidential information associated with the lines. This kind of information is generally protected from public disclosure in Commission proceedings. Moreover, AT&T has treated the information as a trade secret. AT&T provided the information to Revolution under seal pursuant to a protective agreement. AT&T requests that the information be protected from public disclosure.

Upon review of the attachments and the applicable law, the Commission finds that the motion for protective order filed by AT&T on December 6, 2007, should be granted. We find that the information that AT&T seeks to protect is the kind of information typically afforded protective treatment in Commission proceedings.

On March 23, 2006, counsel for Revolution moved for the admission pro hac vice of Christopher Malish of the Texas law firm Foster, Malish, Blair, and Cowan, L.L.P. The attorney examiner granted the motion by entry issued July 6, 2006. By entry issued January 17, 2007, Revolution moved for the substitution of Christopher Malish by Steven R. Shaver of the Texas law firm Friedman and Feiger, LLP and the admission pro hac vice of Mr. Shaver. The attorney examiner granted the motion pro hac vice by entry issued January 17, 2007.

SUMMARY OF THE TESTIMONY

On September 18, 2006, Revolution filed the direct testimony of its witnesses, Sharon Litke and Buddy Howard. In her testimony, Ms. Litke provides an overview of the dispute. In a demand letter, AT&T claimed that Revolution owed $360,869.26 for service charges. Revolution disputes this amount. The charges stem from two sources. One charge is for network technician labor for establishing new customer connections. The other charge is for TT27.

Ms. Litke explained that Revolution provides telecommunications services to customers using AT&T's facilities. To process orders for new service, Revolution states that AT&T may connect service at a customer's address either manually or electronically. In many instances, a line already exists at an address because a prior resident had service. Consequently, turning the service on only requires an electronic change at the switch. Revolution reminds the Commission that in Case Nos. 00-1368-TP-ATA[1] and 96-922-TP-UNC[2] the Commission had established the non-recurring charge for electronic flow-through of UNE-P orders at $.74. After reviewing its billings, Revolution discovered that AT&T had been charging as if manual labor were required to connect electronic flow-through orders. If manual labor were required, AT&T charged a rate of $33.88 for each occurrence (Litke Testimony p. 2).

In 2002, Revolution disputed AT&T's billing of $2,957,583.64 because it reflected charges for manual labor when the work was actually done electronically. Revolution filed for relief and the case was docketed as *In the Matter of the Petition of Revolution Communications Company, LLC dba 1-800-4-A-PHONE for Post-Interconnection Dispute Resolution with Ameritech Ohio*, Case No. 02-1957-TP-UNC (Case No. 02-1957-TP-UNC). Through mediation, AT&T agreed to credit Revolution's account. According to Ms. Litke, AT&T acknowledged that it had billing problems that led to Revolution being overcharged for service. In August 2002, AT&T agreed to credit the entirety of the disputed amount and further resolved to correct its billing system. Revolution received the last installment of the credit ($37,885.34) on October 2005 (Litke Testimony p. 2).

Revolution claims that this case involves the same billing problems that were at issue in Case No. 02-1957-TP-UNC. As before, Revolution believes that AT&T has failed to correct its billing system so that Revolution is not charged the $33.88 manual rate for $.74 electronic flow-through orders. From the electronic data interface (EDI), Revolution

1 *In the Matter of the Application of Ameritech Ohio for Approval of a Carrier-to-Carrier Tariff*, Case No. 00-1368-TP-ATA.

2 *In the Matter of the Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic*, Case No. 96-922-TP-UNC.

surmised that it was being charged inappropriately at higher rates. The EDI showed "no dispatch," and it also revealed that orders were completed within hours. From this information, Ms. Litke concluded that there was no manual labor involved in completing certain connections (Litke Testimony p. 3).

Ms. Litke based her conclusions on her own work experience at AT&T and that of her predecessor, who has retired. Ms. Litke states that she had relevant managerial work experience at AT&T before taking her position with Revolution. She states that she has personal experience with the necessary steps for processing service orders. Based on her experience, it takes more than 24 hours from the time an order is submitted to the time that it takes a technician to complete the wiring activity to initiate service. She explains that there are inherent delays in the process (Litke Testimony p. 3).

To confirm its suspicions, Revolution researched its billing data. Specifically, Revolution combed for instances where AT&T charged $33.80 for dispatch related labor and where the EDI showed "no dispatch." Revolution also gathered those orders that were completed in a short time frame. Revolution surmised that orders completed in a short period of time were completed electronically. Revolution compiled and shared its findings with AT&T (Revolution Ex. 2; Litke Testimony p. 4). Revolution collected 12,487 new connect orders for the period November 7, 2003, to September 7, 2005. Of the 12,487 new connect orders, Revolution paid 7,173 at the $33.88 rate. Revolution disputed the remaining 5,314 because they appeared to be completed electronically, on a flow-through basis. In her testimony, Ms. Litke claimed that AT&T could not provide information to show that the orders required rewiring. Because AT&T credited back a significant number of the 5,314 orders, Revolution concluded that AT&T had not corrected its billing system (Litke Testimony p. 4; Revolution Exhibit 6).

Revolution requested more detail for disputed orders that AT&T did not credit. According to Ms. Litke, AT&T has never been able to identify the person who performed the work or describe the work that was done. Revolution summarized the disputes and credits that have arisen since the 2002 settlement (Revolution Exhibit 3). Revolution also retained copies of e-mail and business records concerning the disputes (Revolution Exhibits 4 and 5). Based on its review of the data, Revolution concludes that AT&T has not corrected its billing system and that Revolution has been improperly charged manual labor rates for work that was actually performed on an electronic flow through basis. Moreover, Revolution concludes that AT&T cannot and will not verify that it processed any particular order by manual labor (Litke Testimony p. 4-5). Nevertheless, Revolution states that it has timely paid all bills that AT&T has correctly submitted. Where Revolution has determined that no network technician has completed connections and AT&T has billed Revolution for $33.88, Revolution paid $.74 (Litke Testimony p. 8).

Ms. Litke also provides background on the TT27 dispute. TT27 involves charges for use of an ILEC's facilities. She testified that AT&T did not completely capture TT27 for the carrier access billing system (CABS). As a consequence, AT&T claims that it underbilled Revolution. AT&T calculated a loss of $207,762.14, which it backbilled to Revolution (Litke Testimony p. 6). Revolution disputed the bill, in part because it only appeared as a line item on a September 7, 2004, bill (Revolution Exhibit 7). There was no supporting detail to substantiate the amount claimed to be owed. Revolution has reasons to suspect that AT&T's billing is incorrect. Because AT&T is one of Ohio's largest carriers, Revolution believes that most traffic terminating to Revolution's customers would come from AT&T's customers (Litke Testimony p. 6).

Revolution argues that AT&T has an affirmative duty to present billings that comply with ordering and billing forum (OBF) requirements. OBF compliant billings are auditable. More than that, billings must contain minutes of transport, the number of calls which transited AT&T's network, the rate per minute applicable to the transport being billed, and the end office at which the traffic terminated for other competitive local exchange carriers (CLECs), incumbent local exchange carriers (ILECs), or wireless carriers. To the contrary, AT&T billed Revolution a lump sum, without supporting detail, for charges relating back to September 2002 (Litke Testimony p. 6-7).

Revolution questioned the billing. In response, AT&T put a "place holder" on the disputed amount, suspending temporarily AT&T's demand for payment. On February 20, 2006, AT&T revoked the place holder and demanded that payment of $113,661.42 be put into escrow for TT27 charges. According to Revolution, AT&T continued to claim that it was unable to provide detailed billing. Nevertheless, Ms. Litke testified, AT&T revised its billing in February 2005 and August 2005 because of errors it found in its billing system. Because of these errors, Revolution does not trust AT&T's billing (Litke Testimony p. 7).

Aside from a lack of detail, Revolution claims other reasons that make AT&T's TT27 charges uncollectible. Revolution alludes to the parties' interconnection agreement, which contains a provision that no claim may be brought more than 24 months after the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention. Because AT&T has never brought a claim for Revolution's alleged debt in any forum, Revolution argues that AT&T's claim is time barred by Section 10.1.1 of the interconnection agreement.

In support of its arguments, Revolution also presented the testimony of Mr. Buddy Howard. Mr. Howard is a telecommunications billing consultant. Mr. Howard agreed with Ms. Litke that AT&T attempted to backbill for TT27 that was not completely captured for processing to CABS. He further agreed that AT&T's attempts to verify the single line item by summary detail and spreadsheets was not acceptable. Beyond Revolution, Mr. Howard declared that AT&T backbilled other CLECs in a similar fashion. After his review of the billing, Mr. Howard concluded that it was suspiciously high because AT&T is one of the largest carriers in the state and most traffic terminating to Revolution's customers would be expected to come from AT&T's customers (Howard Testimony p. 1-2).

In concert with Ms. Litke, Mr. Howard noted that AT&T's billing was not OBF compliant. Lacking sufficient detail, Mr. Howard concluded that it would be inappropriate for Revolution to pay the bill (Howard Testimony p. 2).

For its case, AT&T presented the testimony of Michele Barnes. She is employed by AT&T as the Chief of Staff for the Ohio Local Field Operations Organization. In her testimony, Ms. Barnes explains how central office technicians receive order information. In addition, she describes the activities of the central office technicians who are involved in provisioning new local service orders. She also discusses the activities associated with installing UNE-P. As a final matter, she pointed out the factors that affect the amount of time required to assign and complete orders (Barnes Testimony p. 4, AT&T Br. 25-26).

Ms. Barnes explained that central office technicians receive service orders through the Frame Operations Management System (FOMS). After a service order is issued, FOMS determines whether physical wiring is required. If wiring is needed, FOMS issues a work order. The technician can manually pull an order from the work list or the order will be system-loaded into the technician's load sheet. At the beginning of their shift, the central office technicians pull their individual load sheet and sort the wiring orders by due date. Ms. Barnes stated that, depending upon the size of the central office and the volume of orders, it could take up to an hour to print and sort orders. After sorting, the central office technician begins wiring for each order. After completing the wiring, the orders are tested on the due date by a Mechanized Loop Testing system. If there are any wiring problems, the central office technician will make corrections (Barnes Testimony p. 7-8, AT&T Br. 26).

Ms. Barnes highlighted some of the factors that would contribute to the time required by a central office technician. She revealed that a frame in a central office can vary from 12 feet tall and 120 feet long to a small frame of 6 feet tall and 10 feet long. The volume of orders in a central office can vary from one order per week to about 100 orders per day. She explained that the placement of blocks on the frame can cause one order to require more time than another. For example, she stated that some frames are designed so that all blocks are on the same side of the frame. Others have office equipment on one side of the frame and cable pairs on the other side. In such a situation, the central office technician must feed the wire through the frame. This can be difficult in a large office because of wire congestion on the frame. In addition, a frame with mostly solder connections takes much longer to wire than either a wire wrap conventional frame or a cosmic frame (Barnes Testimony p. 8-9, AT&T Br. 27-30).

To explain the CLEC ordering process and the operational aspects of the Local Service Request (LSR), AT&T offered the testimony of Mr. Frederick C. Christensen. Mr. Christensen is employed by AT&T as Area Manager – Regulatory Relations for the AT&T Wholesale's Customer Service Organization (CSO). In that capacity, he is responsible for monitoring the performance of AT&T Wholesale's Local Service Center (LSC) and Operations Support Systems (OSS). He also investigates complaints relating to LSC and OSS operations. Initially, he describes the CLEC ordering process, emphasizing the activities that must occur before, during, and after the submission of a LSR from a CLEC to migrate a customer from AT&T to a CLEC (Christensen Testimony p. 2-5, AT&T Br. 6-7).

Mr. Christensen explained that a CLEC may issue an LSR in either a mechanized or manual manner. A CLEC may create its own Electronic Data Interchange, which interfaces with AT&T's OSS or the CLEC can access AT&T's Local Services Request Exchange System (LEX), a web-based pre-ordering and ordering tool. Using either the Electronic Data Interchange or LEX method, Mr. Christensen explained that human intervention may be required to process an LSR fully. Any processing errors, for example, may require human intervention. LSR's that cannot be processed mechanically and require human involvement are referred to as complex requests. LSR's that do not require human intervention are referred to as simple requests (Christensen Testimony p. 6-7, AT&T Br. 8).

For the manual method, a CLEC submits an LSR by completing a written form available from a website. After completing the form, the CLEC may submit it by e-mail. Mr. Christensen mentioned that the mechanized method is the preferred approach. It is less prone to error, can be processed more easily, and can be tracked by both AT&T and the CLEC. Mr. Christensen noted that the Electronic Data Interchange and LEX methods were available to Revolution during the time in question. Even though an order may be submitted initially by a mechanized method, its rarity or complexity may cause it to be dropped from the mechanized method to be processed manually (Christensen Testimony p. 7-8, AT&T Br. 9-10).

Mr. Christensen described the local service ordering process. In the pre-order stage, an end user seeks service from a CLEC. The end user provides information and permission for the CLEC to obtain account information from AT&T's database. The CLEC will pre-order the transaction through either mechanized or manual methods. From the information obtained from AT&T's database, the CLEC can create a complete and accurate LSR. The pre-ordering information includes the end user's address, service history, and the features available to the end user. If after the pre-ordering stage the CLEC wishes to go forward with an LSR, it may do so using any of the mechanized or manual processes. Upon receipt by AT&T, AT&T processes it either mechanically or manually and remits it to the network provisioning systems. For its part, AT&T returns a Firm Order

Confirmation (FOC) to the CLEC to notify the CLEC that its request will be completed on the date specified in the FOC (Christensen Testimony p. 6-9, AT&T Br. 10-11).

In responding to Ms. Litke's testimony, Mr. Christensen claims that Ms. Litke is unaware that the concept of flow through is limited to the ordering process. She mistakenly assumes that an order that flows through the ordering process also flows through the provisioning process and is, therefore, eligible for the $.74 charge and not the $33.88 charge. Mr. Christensen points out that the FCC restricts flow through to ordering systems. An order may flow through the ordering system only to need the attention of a technician at the provisioning stage (Christensen Testimony 12-13, AT&T Br. 7, 13-14).

Ms. Litke found instances where AT&T charged for dispatch labor costs where the EDI indicator suggested that there was no technician dispatched to complete the order. Rejecting Ms. Litke's assertion, Mr. Christensen flatly denied that there is an EDI "no dispatch" indicator. Mr. Christensen did note, however, that there is a facility available indicator to identify outside facility availability. Because it provides a snapshot of facilities available to a residence at the pre-ordering stage, facilities may or may not be available at the time of the ordering stage. Moreover, he stated that the facility available indicator is used to identify outside facility availability only. It has no relationship with central office wiring. Mr. Christensen explained that Revolution may have received a pre-order indicator that facilities were available to an end user's premises. However, by the time that Revolution submitted an LSR, part of the outside facilities may have been reassigned to a different end user. AT&T cannot tie up facilities only upon the expectation of a firm order from a CLEC (Christensen Testimony p. 13-14, AT&T Br. 7, 15).

In part III of his testimony, Mr. Christensen explains AT&T's claims and dispute process. Mr. Christensen explained that, normally, AT&T switching machines create Automatic Message Accounting (AMA) records. The records report minutes of use of calls that originate and terminate on AT&T's switching equipment. AT&T uses the AMA records to create bills that are submitted to CLECs. If a CLEC disputes a bill, it may submit a billing claim to the LSC by means of fax, e-mail, or the Electronic Exchange of Claims (ExClaim) system. ExClaim is a mechanized system that offers claims status, tracking of claims, and other benefits. AT&T strives to notify the CLEC of its decision with respect to a claim within 30 days. If a claim cannot be processed within 30 days, AT&T provides periodic status reports to the CLEC. If AT&T denies a claim, AT&T gives the CLEC the option of re-filing its claim with more supporting data (Christensen Testimony p. 14-15, AT&T Br. 16).

To process a billing dispute claim, the LSC billing team needs sufficient information for investigation. Mr. Christensen highlighted the key information requirements: the account identifier, the bill date, Circuit Identifier/Working Telephone Number, the applicable Universal Service Order Code, the claimed amount, specific CLEC comments, and Service Order that may have caused the billing issue, the applicable Purchase Order Number, and the Common Language Location Identifier if available. Without this information, Mr. Christensen asserted that the LSC will likely not be able to substantiate the CLEC's claim and will deny the claim for lack of information. A CLEC may provide claim information by either a standardized form available on-line or via the ExClaim system. Insofar as reviewing claims, AT&T states that it has instituted policies to ensure that its employees prepare bills and records with care and honesty (Christensen Testimony p. 15-16, AT&T Br. 16-18).

According to Mr. Christensen, AT&T investigated Revolution's claims. According to AT&T's records, Revolution filed 24,916 claims in the amount of $33.88 and $33.14 for the period December 2004 through October 2005. The claims for $33.14 equate to $33.88 less the $.74 that Revolution believes that it should have been charged. AT&T investigated the claims and made various findings. Among the claims, AT&T found that some were correct, some were duplicate claims made by Revolution, some were billed pursuant to the interconnection agreement between the parties, some were submitted beyond the dispute time frame specified in the interconnection agreement, or the disputed charge was not found on the customer's bill (Christensen Testimony p. 17). To verify whether a dispatch has occurred, the LSC consults the Work Force Administration (WFA) system. If AT&T finds the CLEC's claim to be invalid, AT&T informs the CLEC of its findings and denies the claim (Christensen Testimony p. 17-18, AT&T Br. 18-20).

Ms. Donna Novickas sponsored testimony on behalf of AT&T. She is employed by AT&T as Associate Director-Network Midwest Regulatory Support. In her testimony, she describes the service order provisioning process and the systems used to complete the process. She also responds to issues raised by Revolution's witness, Sharon Litke.

Ms. Novickas explains that when OSS accepts a service request it creates an internal service order and passes it on to the provisioning systems. The provisioning systems assign necessary facilities. In addition, the provisioning systems assess the type of service requested and the physical location of the end user to determine if it is necessary to dispatch a technician (Novickas Testimony p. 2, AT&T Br. 21).

In her testimony, Ms. Novickas discloses how AT&T determines whether a service order requires a dispatch. Pointing out that a service order may require more than one dispatch, Ms. Novickas identifies two provisioning systems that determine the types of required dispatches: Loop Facility Assignment and Control System (LFACS) and SWITCH. LFACS determines whether all segments of outside plant facilities are combined together from the serving central office to the service address. If any of the facilities are not connected, AT&T will have to dispatch an outside technician. Upon discovering that all facilities are not connected, LFACS electronically assigns facilities and creates a work order in the Work Force Administration Dispatch OUT (WFA-DO) system. The work instruction is then automatically forwarded to the Network Dispatch Center where it is assigned to an outside technician. The dispatch of an outside technician takes at least one business day (Novickas Testimony p. 2-3, AT&T Br. 21, 22).

When the SWITCH system receives a provisioning request, it determines whether there are central office facilities in place and combined to support the requested services. If the central office facilities are in place and connected from the office equipment to the assigned cable pair, it is known as Dedicated Inside Plant (DIP). If a DIP is in place, there is no need for the dispatch of a technician. If SWITCH finds that facilities are not in place or are not connected, it will assign the necessary facilities and dispatch a technician to make the connections to provide service to the CLEC's customer (Novickas Testimony p. 4-5, AT&T Br. 22-23).

Ms. Novickas highlighted that work could be required inside the central office (Dispatch In), outside the central office (Dispatch Out), or both. For an order to be processed electronically, both the central office and outside plant must be connected (Novickas Testimony p. 5-6, AT&T Br. 23, 24).

Ms. Novickas disputes Ms. Litke's claim that the time in which work is completed is an indication of whether orders are provisioned manually. She explained that a technician could receive a work order within minutes of provisioning by the SWITCH system. Moreover, the timing of the technician's work load could allow the technician to complete the central office work within minutes after receiving work instructions. Understanding that Ms. Litke has LSC experience, Ms. Novickas doubted Ms. Litke's network provisioning expertise. In summary, Ms. Novickas pointed out that a mechanized request may require manual effort in the ordering process and in the provisioning process (Novickas Testimony p. 6-7, AT&T Br. 24-25).

To address the issues concerning TT27, AT&T presented the testimony of J. Scott McPhee. Mr. McPhee is an Associate Director-Witness Support for AT&T California. He is responsible for researching, supporting, and communicating AT&T's product policy positions in regulatory proceedings across the 13 incumbent AT&T states, including Ohio.

In defining TT27, Mr. McPhee stated that TT27 involves usage for calls that are originated by CLECs that use AT&T's local switching, are intraLATA, interswitch in nature, and which do not terminate on the AT&T network, but instead, terminate to an end user served by another facility-based CLEC, ILEC, or a wireless carrier. He explained that TT27 charges in the UNE-P environment consist of rate elements: (1) Unbundled Local Switching (ULS) switch usage for the use of the leased switch port at the end office serving the UNE-P end user (2) Unbundled Local Switching-Shared Transport (ULS-ST) for the carriage of the call across AT&T's network to the trunk side of the terminating end office, and (3) UNE ULS SS7 signaling charges (on a per call basis) associated with the routing of the call to the terminating carrier (McPhee Testimony p. 5, AT&T Br. 4, 32).

AT&T provides TT27 usage data to CLECs in an industry standard format. Specifically, AT&T uses the Exchange Messaging Interface (EMI) to provide call detail to CLECs. The EMI record has every element of data needed to create a monthly bill for a CLEC. The call detail provided in the Daily Usage Feed (DUF) allows CLECs to reconcile and validate their monthly CABS usage bills for TT27 (McPhee Testimony p. 5-6, AT&T Br. 31-33).

Mr. McPhee claims that there is sufficient detail in AT&T's CABS bills to comply with industry guidelines, including OBF guidelines (McPhee Testimony p. 7, 11-12). Because the traffic in dispute was a backbilled adjustment, it was not billed within the current usage section of the CABS bill. Nevertheless, AT&T contends that Revolution received sufficient information with the original billing to validate the backbilling (McPhee Testimony p. 7). According to AT&T, its billings meet the four criteria enumerated by Revolution's witnesses: (1) minutes of transport, (2) number of calls which transited AT&T's network, (3) the rate per minute applicable to the transport being billed, and (4) the end office at which the traffic terminated for other CLECs, ILECs, or wireless carriers. Moreover, AT&T claims that Section 8.10 of the parties' interconnection agreement specifies the billing detail requirements. It is AT&T's contention that the DUF complies with the interconnection agreement (McPhee Testimony p. 7-9, AT&T Br. 33-36). AT&T points out that Revolution does not deny that it received DUF records from AT&T from which Revolution could have verified backbilled TT27 charges (McPhee Testimony p. 8, 12, AT&T Br. 36).

In Mr. McPhee's testimony, he outlined Revolution's complaint. He stated that, in its August and September 2004 CABS bills, AT&T submitted a bill to Revolution for previously unbilled TT27.. AT&T presented the bill in a normal format on the CABS billing statement. The backbill was for usage occurring from October 1, 2002, through June 9, 2004. The September 2004 bill reflected charges for October 1, 2002, through March 28, 2004, and was presented as a line item debit. The August 2004 bill reflected the reprocessing and billing for use that occurred March 29, 2004, through June 9, 2004. Revolution disputes the September 2004 charges because they were not issued in an OBF compliant format (McPhee Testimony p. 4, AT&T Br. 31).

Outlining the circumstances leading up to the backbilling, Mr. McPhee explained that in June 2004 AT&T converted its billing system for CLEC UNE-P traffic from the Resale Billing System (RBS) to the CABS billing system. After a warning from the CABS system and an investigation, AT&T discovered that it had been under billing CLECs for TT27. AT&T traced the problem to the inadvertent omission of a programming requirement to process TT27 for billing CLECs. AT&T notified affected CLECs in August and September 2004, advising them of the issue and amounts in question. AT&T backbilled a total of $7,124,122.31 for TT27 usage in the August and September 2004 CABS billing cycles, which impacted over 40 CLECs. Inadvertently, AT&T failed to notify Revolution regarding the TT27 backbilling. In response to inquiries from Revolution, AT&T sought to provide Revolution with additional information. Initially, AT&T calculated that Revolution owed $207,770.90 for backbilled charges. Finding that a portion of the TT27 to be backbilled had been previously billed as TT26 traffic, AT&T credited Revolution in the amount of $14,615.46. The total amount that AT&T claims that it is due is $193,155.44, plus late fees. According to AT&T Revolution is the only CLEC in Ohio to file a formal complaint concerning TT27 backbilled charges (McPhee Testimony p. 9-11, AT&T Br. 36-38).

Addressing the policy concerning backbilling, Mr. McPhee stated that the parties' interconnection agreement typically provides the terms for backbilling. If the interconnection agreement is silent, he stated that a state tariff might provide some guidance for the time restrictions for backbilling. He points out, however, that the interconnection agreement between AT&T and Revolution is silent on backbilling and that there is no carrier-to-carrier tariff in Ohio. For consistency, AT&T elected to mirror the 24-month time frame that is followed in other Midwest states (McPhee Testimony p. 11, AT&T Br. 38).

AT&T rejects Revolution's assertion that AT&T's backbilling of TT27 violates billing standards. AT&T emphasizes that OBF issues guidelines for bill formats. It does not issue rules that can be violated. AT&T noted that the backbilling was listed under a section of the CABS bill titled "Detail of Adjustments Applied." Because it was a backbill, AT&T contends that it was not mandatory to include usage detail. AT&T had already provided Revolution call detail by means of a DUF record. Nevertheless, AT&T states that it worked with Revolution to provide detail, including spreadsheets, to reconcile the adjustment (McPhee Testimony p. 12-13, AT&T Br. 38-39, 40).

As a basis for rejecting AT&T's demand for payment, Revolution's witness Ms. Litke cites Section 10.1.1 of the interconnection agreement. Section 10.1.1 time bars certain claims that arise from disputes under the agreement. AT&T agrees that Section 10.1.1 relates to claims and disputes but disagrees with the notion that 10.1.1 encompasses backbilling. More to the point, AT&T emphasizes that, unlike Revolution, AT&T never lodged a dispute under the agreement (McPhee Testimony p. 13).

BRIEFS

Relying on AT&T's definition, Revolution describes TT27 as calls that are originated by CLECs that use AT&T's local switching, and that do not terminate on AT&T's network. Charges for TT27, according to the interconnection agreement, are billed monthly

(Revolution Br. 7). In its brief, Revolution points out that AT&T submitted a bill for TT27 charges representing over 21,000,000 separate entries for the two-year period from October 2002 to July 2004 (Revolution Br. 5, 14). Revolution responded by requesting an OBF compliant billing. Revolution reports that AT&T refused. AT&T took the position that late or unbilled charges do not have to meet industry standard billing requirements. Following AT&T's reasoning, Revolution argues that AT&T could avoid industry standards simply by withholding charges for a sufficient period of time. Moreover, having destroyed its own DUF records, Revolution contends that AT&T is attempting to shift the burden of verification to Revolution (Revolution Br. 5).

Revolution highlights the financial hardship resulting from AT&T's action. In addition to the TT27 charges, Revolution points out that AT&T seeks to charge tens of thousands of dollars in interest. If AT&T is allowed to bill unsubstantiated, lump sum charges, Revolution contends that it would place CLECs and competition at risk. Revolution believes it should not bear the burden of AT&T's billing system mistake. Moreover, allowing AT&T to ignore its contractual obligations in this instance would forgive AT&T's mistakes and render proof of billing unnecessary (Revolution Br. 6).

Added to Revolution's concerns is the fear that AT&T could put CLECs out of business simply by disputing an amount sufficiently high to strangle a targeted CLEC (Revolution Reply Br. 5). Countering AT&T's reliance on the interconnection agreement, Revolution points out that the agreement does not provide an escrow calculation when a party demands two year's worth of charges in a single bill. Moreover, Revolution emphasizes that the agreement neither contemplates multi-month billing nor backbilling (Revolution Reply Br. 6).

Revolution emphasizes that monthly bills must be OBF compliant so that a bill can be audited and charges verified. To be OBF compliant, a bill must include the following: (1) minutes of transport, (2) the number of calls that transited AT&T's network, (3) the rate per minute for the transport, and (4) the identity of the end office where the traffic terminated (Revolution Br. 7, Revolution Reply Br. 13).

According to Revolution, AT&T admits that its bill is not OBF compliant. AT&T, however, takes the position that backbills do not need to be OBF compliant. Revolution further points out that the interconnection agreement does not address the requirements of backbills, only monthly bills. Revolution, therefore, concludes that backbilling should be denied payment (Revolution Br. 7-8).

AT&T urges the Commission to sustain its TT27 charges. In support of its position, AT&T contends that there is no statute, rule, or Commission order that dictates the proper format or contents of backbilled TT27 charges. Nor do OBF standards provide guidance on backbilling. Regardless, AT&T points out that Revolution never put OBF standards into evidence to support its claim that AT&T's backbilling was not OBF compliant (AT&T Br. 44).

Countering AT&T's assertion that Revolution failed to provide evidence concerning AT&T's OBF compliance, Revolution argues that AT&T's witness provided sufficient evidence. Revolution refers to AT&T's witness Scott McPhee, who identified the four elements of OBF compliance. Moreover, according to Revolution, the witness confirmed that AT&T's backbills were not OBF compliant. Through the testimony of AT&T's witness, Revolution contends that it is relieved of any necessity to provide evidence of OBF compliance (Revolution Reply Br., 13-14).

In its reply brief, Revolution emphasizes that AT&T's billing system has had a history of errors and that AT&T cannot substantiate its billing (Revolution Reply Br. 3-4). Moreover, because of AT&T's prior billing inaccuracies, Revolution does not trust AT&T's dispatch charges or TT27 billings. Revolution points out that AT&T revised its billing on more than one occasion, undermining Revolution's trust in AT&T's billing system. AT&T's September 2004 billing was for $207,762.14. After Revolution disputed the charges, AT&T acknowledged a billing system problem and revised the charges in February 2005. In August 2005, Revolution states that AT&T again acknowledged a billing system problem and revised its demand for payment again. On February 20, 2006, AT&T revised its demand for payment to $113,661.42 (Revolution Br. 9-10).

Revolution claims that neither it nor AT&T has DUF files from which to generate OBF compliant billings for 21,000,000 traffic transactions (Revolution Br. 11). Revolution alleges that AT&T destroyed its DUF files (Revolution Br. 12, 13). Revolution, for its part, is uncertain whether AT&T ever provided DUF files or if Revolution ordered and received DUF files (Revolution Br. 12). Revolution argues the inequity of AT&T requiring Revolution to maintain DUF files longer than AT&T maintains its own DUF files (Revolution Br. 13). To Revolution, AT&T appears to request an exception from OBF compliance on the grounds that its billings are too old. Revolution emphasizes that the interconnection agreement requires monthly billing; there is no provision for late bills, tardy invoices, or excusable delay (Revolution Br. 14). Although AT&T never filed an action, Revolution filed suit to cease AT&T's collection activities (Revolution Br. 14).

Although Revolution doubts whether AT&T provided DUF files, AT&T claims that it is certain that it provided Revolution with DUF files that contained OBF compliant information (AT&T Reply Br. 6). AT&T rejects as untrue Revolution's claim that it never received DUF files from AT&T. As proof, AT&T refers to Revolution's responses to discovery to confirm that Revolution acknowledged the receipt of DUF files from AT&T (AT&T Reply Br. 6). Relying on the testimony of its witness, Mr. McPhee, AT&T is also certain that it provided usage detail in compliance with OBF guidelines and in EMI format in accordance with the terms of the parties' interconnection agreement. Furthermore, according to AT&T, Mr. McPhee disagreed with the claim that AT&T's backbill is not OBF compliant (AT&T Reply Br. 9). From this information, AT&T concludes that Revolution chose not to reconcile AT&T's billings (AT&T Reply Br. 6).

AT&T also contests Revolution's claim that AT&T destroyed DUF records. AT&T states that it did not destroy DUF records. As a part of record management policy, AT&T explains that it retains DUF files for 45 days, after which time the records undergo a natural process of "aging off." There is no destruction of records in violation of a record retention requirement or policy (AT&T Reply Br. 6-7). Nevertheless, AT&T states that it attempted to assist Revolution in reconciling the charges by providing spreadsheets with detailed information (*Id.* at 8).

Aside from the billing being late, lacking OBF compliance, and lacking substantiation, Revolution highlights Section 10.1.1 of the interconnection agreement. Section 10.1.1 provides that no claim may be brought for any dispute arising more than 24 months from the date upon which the dispute occurred or reasonably should have been discovered (Revolution Br. 14). Exploring when the 24-month period should begin, Revolution concludes that the TT27 charges should have been discovered by AT&T because the charges always existed in the DUF (Revolution Br. 15).

Revolution points out that the Telecommunications Act also provides a two-year limitation of action. The parties' interconnection agreement defers to the Act if there is a conflict. The Act, under 47 U.S.C. §415(a), provides that actions by carriers for recovery of lawful charges shall begin within two years of the time the action accrues. Under this provision, Revolution concludes that AT&T's actions to recover TT27 charges accruing from October 2002 to June 2004 are completely time barred (Revolution Br. 14-15, Revolution Reply Br. 3-4).

AT&T disagrees. AT&T points out that Revolution has filed its complaint under state law, not federal law. AT&T claims that even if the complaint were filed under federal law, AT&T has asserted its claims within two years (AT&T Reply Br. 5).

Admitting that it erred by not billing timely, AT&T claims that it is undisputed that Revolution's customers generated the traffic that led to the billing. That the billing may be in a non-compliant format is no excuse for nonpayment. Ultimately, AT&T regards its billing as just and reasonable (AT&T Br. 44-45).

Revolution challenges AT&T's claim that there is no dispute that Revolution's customers generated TT27 traffic. Revolution points out that it has no way to determine whether the traffic is Revolution's, another CLEC's, previously billed and paid charges, or an error (Revolution Reply Br. 16).

With respect to dispatch charges, Revolution mentions in its brief that this case presents a repeat of the same issue that the parties settled in 2003. For the settlement, AT&T credited 100 percent of the dispatch charges back to Revolution. Revolution believes that the current dispute has arisen because AT&T has not corrected its billing system since the first settlement (Revolution Br. 16). Revolution contends that AT&T did not bill timely because AT&T experienced problems with its billing system. Because of changes to its CABS system, AT&T could bill previously unbilled charges (Revolution Reply Br. 13).

Revolution does not trust AT&T's billings. That AT&T has extended credits to Revolution, in apparent recognition of the inaccuracy AT&T's billings, gives Revolution added cause for not trusting AT&T's billing (Revolution Br. 16-17). Moreover, Revolution characterizes the current case as a continuation of the dispute settled in Case No. 02-1957-TP-UNC. It is Revolution's opinion that AT&T has not corrected its billing system and that its billings are still in error (Revolution Br. 18-19, Revolution Reply Br. 7-8).

AT&T regards as severely misleading Revolution's claim that AT&T's dispatch billings have been inaccurate, untrustworthy, and suspicious. AT&T, instead, contends that Revolution was improperly billed. Noting Revolution's reference to a settlement agreement in a prior dispute, AT&T claims that Revolution's reliance on confidential terms of settlement cannot be used, under the rules of evidence, to establish liability. If the Commission considers the prior agreement, AT&T wishes the Commission to construe the settlement as an indication of AT&T's generosity and willingness to settle the issue (AT&T Reply Br. 12). Contrary to Revolution's assertions, AT&T declares that it made significant changes to its billing system in October 2003 (AT&T Reply Br. 12-13).

AT&T's brief provides the background for dispatch charges. In an Opinion and Order issued in Case Nos. 00-1368-TP-ATA and 96-922-TP-UNC, AT&T recalls that the Commission established $.74 as the charge for simple migrations and for the provision of UNE-P where facilities are connected but may need dial tone activation or electronic activation of existing cross connections. In an entry issued July 11, 2002, AT&T states that the Commission established a rate of $33.88 to cover the costs of combining network components to offer a new UNE-P combination (AT&T Br. 6). In essence, there is a charge of $33.88 where a technician is required to complete a connection. Otherwise, AT&T charges $.74 for electronic activation.

In its brief, AT&T argues that Revolution's claims must be evaluated under the constraints of Section 4905.26, Revised Code. To succeed, AT&T asserts that Revolution has the burden of establishing that AT&T's billing and charges are in some manner "unjust" or "unreasonable" (AT&T Br. 41-42).

AT&T concludes that Revolution has failed to support its claim regarding dispatch charges. It has failed to show that AT&T billed physical labor rates for services that were completed by electronic means. AT&T points out that work may take place at the customer's premises, in AT&T's outside plant, or within the central office. Moreover, AT&T distinguishes whether the work is completed electronically or manually and how an order is submitted and processed. In other words, there are "dispatch" charges and "order processing" charges (AT&T Br. 2, AT&T Reply Br. 13-14). To point out the distinction, AT&T states that an order for a UNE combination may flow through the OSS, requiring only keystrokes. Nevertheless, the UNE facilities may not be completely connected through from the central office to the customer's premises. A technician may be needed to complete the UNE combination, in which case the $33.88 charge applies. When facilities are already in place from the central office to the customer's network interface device, the $.74 charge applies (AT&T Br. 2-3, 43-44).

Referring to AT&T's witness' testimony, Revolution states that the average time for an electronic pass-through connection is four hours. Even further, Revolution points out that AT&T's witness, Mr. Christensen, claimed that it is "safe to assume" that a connection completed on the same day is an electronic pass through. Based on this premise, Revolution looks with suspicion at any charge for $33.88 where the connection is completed in less than four hours or on the same day. In further support of its contention, Revolution enumerates the inherent delays that a technician would encounter in completing a manual connection. Because of the enumerated delays, such as numerous orders to be completed, wire congestion, soldering, or running and pulling jumpers, Revolution concludes that it is unlikely that manual orders can be completed in four hours or a day (Revolution Br. 19-21).

Revolution points to AT&T's testimony in which AT&T explains that a mechanized, electronic pass-through connection takes, on average, four hours. Moreover, any connection completed in less than a day is likely a situation where all network pieces were in place. By contrast, Revolution points to testimony where a technician's job can be completed within minutes. Revolution finds that this strains credibility, that a technician can complete a task faster than a mechanized, electronic pass through connection. Revolution highlights that AT&T did not provide evidence of a technician completing a connection within minutes (Revolution Reply Br. 11). Because AT&T has destroyed its records, Revolution concludes that AT&T cannot support its billing with documentation of the tasks performed by technicians (Revolution Reply Br. 12).

In its reply brief, AT&T rejects Revolution's reference to four hour completion times as a self-serving, arbitrary "benchmark." AT&T claims that it provided Revolution with numerous samples of physical work completed by a technician outside a four-hour period. AT&T argues that four hours cannot be used as a basis for determining whether physical work was done or not (AT&T Reply Br. 14-15).

In response to discovery requests, Revolution states that AT&T failed to provide information relating to a random sampling of ten disputed orders. The average time to complete nine of the ten orders was 22 minutes. AT&T claimed that the work was performed by a technician. Revolution doubts that a technician could complete the orders in 22 minutes, over three and a half hours faster than an electronic connection. In its discovery request, Revolution sought facts concerning the identity of the technician, the nature of the work performed, the length of time the technician took to complete the task, and other factors. Relying on AT&T's witness' testimony, Revolution states that AT&T retains pass through connection records for only a period of 30-90 days. The records of whether orders were provisioned manually or electronically have been destroyed (Revolution Br. 21-22).

Insofar as insufficient information obtained through discovery, AT&T replies that Revolution did not file a motion to compel. AT&T, therefore, concludes that the matter is moot. Regardless, AT&T claims that it provided Revolution with more than sufficient information to validate its charges (AT&T Reply Br. 15).

AT&T states that Revolution's claims are barred for failure to abide by the terms of the interconnection agreement, which was filed in Case No. 02-3-TP-NAG. According to AT&T, Revolution failed to deposit all of its unpaid charges into the escrow account that it created pursuant to Section 8.4. Only after the Commission, in a March 29, 2006, entry, ordered Revolution to deposit $100,000 into the account did Revolution fully comply. AT&T highlights Section 10.4.1 that provides that failure to deposit all disputed sums constitutes an irrevocable and full waiver of Revolution's right to dispute the subject charges. Consequently, AT&T contends that Revolution has waived its right to dispute the charges and the complaint should be dismissed (AT&T Br. 5-6, 42-43).

Revolution notes that AT&T's witness Mr. Christensen describes how dispatch charges are generated, how orders are processed, and how orders are provisioned. But Revolution is not concerned with how the process is supposed to work today. Relevant, according to Revolution, is how the processed worked as AT&T's billing system evolved from what it used to be. Responding to Mr. Christensen's description of what a technician does in order for AT&T to bill for services, Revolution has no problem paying a technician for work performed. Revolution's concern is AT&T's inability to provide evidence of what a technician actually did. Revolution claims that in a previous case (Case No. 02-1957-TP-UNC) AT&T admitted to an error rate of 100 percent of the billings that Revolution put into dispute. The case involved AT&T charging for technician services when no technician services were required. From then, Revolution has been wary of AT&T's billing system, which it regards as highly suspect and untrustworthy. Adding to Revolution's suspicion is that AT&T did not revise its billing system from the year 2000 to August 2005, the period during which the dispute arose (Revolution Reply Br. 6-8, 10, 12).

Adding to Revolution's suspicion of AT&T's billing is that AT&T does not retain records relating to electronic provisioning for a period longer than 30-90 days. There are no records of whether a technician completed the provisioning. Because AT&T destroyed the records, Revolution believes that it would be appropriate to shift the burden of proof to AT&T (Revolution Reply Br. 9).

Referring to Mr. Christensen's testimony concerning AT&T's claims investigation process, Revolution is not satisfied that AT&T conducts a thorough review of CLEC billing disputes. Instead of reviewing all claims, Revolution points out that AT&T reviews only random claims. According to Revolution, if a CLEC continues to assert the claim, AT&T only reviews the process, not the data at issue. Revolution does not accept AT&T's assurances that its employees are committed to care and honesty in ensuring that AT&T's billing practices are sound and accurate (Revolution Reply Br. 10-11).

Revolution notes that AT&T has argued that Revolution has not challenged the veracity of AT&T's $207,770.90 single-item billing. Revolution considers the argument to be absurd because AT&T has destroyed the information that would be necessary to investigate the claim and to establish the veracity of the bill (Revolution Reply Br. 13-14). In response to AT&T's contention that Revolution has the DUF records from which to verify AT&T's billing, Revolution denies that it ever had such records. Beyond having the records, Revolution emphasizes that a DUF record is not a bill. Even if Revolution had the DUF records, Revolution believes that it is unreasonable to examine two years of charges that are billed in increments of thousandths of a cent (Revolution Reply Br. 14-15).

Revolution reveals that, pursuant to the interconnection agreement, AT&T is assessing a late payment fee which has been accumulating since the beginning of the parties' dispute. The charges will continue to accumulate until the resolution of the dispute. Revolution believes that it is inappropriate to charge a late payment fee where it cannot verify the underlying charges. For relief, Revolution seeks an order from the Commission barring AT&T from collecting late charges. Revolution estimates the charges to be well in excess of $100,000 on approximately $360,000 in charges (Revolution Reply Br. 17).

To Revolution, a late payment charge, where there is a bona fide dispute, is unjust, unreasonable, and contrary to state and federal policy. A late payment charge could have the effect of discouraging CLECs from asserting their rights under the dispute resolution process and the Commission's formal complaint process. Revolution urges the Commission to invalidate any additional late charges and order AT&T to credit Revolution any late charges that it has assessed (Revolution Reply Br. 18-20).

The interconnection agreement also provides that disputed amounts be placed in an interest bearing account. If the dispute is resolved in favor of AT&T, Revolution must pay the difference between the amount of the accrued interest and the amount of the late payment charge. If the dispute is resolved in favor of Revolution, Revolution is entitled to the funds placed in escrow and any accrued interest. Late payment charges are waived. There is no provision for Revolution receiving an amount exceeding the escrowed amount plus accrued interest. Revolution describes such an outcome as perverse. Revolution finds particularly egregious that AT&T is assessing late payment charges against Revolution during the pendency of the Commission's complaint proceeding (Revolution Reply Br. 21-24).

Overall, Revolution seeks various forms of relief from the Commission. Foremost, Revolution seeks an order from the Commission declaring AT&T's charges void and that it is entitled to the funds in the escrow account with accrued interest. Moreover, Revolution asks that the charges be credited back to Revolution with accrued interest. Because Revolution believes that it has acted in accordance with the law and the interconnection agreement, Revolution requests an order compelling AT&T to continue to provide services to Revolution pursuant to the interconnection agreement. Revolution also seeks a finding that AT&T's provision of interconnection service, including disconnection of service in March 2006, was unjust, unreasonable, and violated the terms of the interconnection agreement and applicable Commission law and policy. Finally, Revolution asks that the Commission strike from the interconnection agreement the parties' pay and dispute provision (Revolution Reply Br. 28-29).

Noting Revolution's request that the Commission void AT&T's billing, AT&T claims in its reply brief that Revolution is attempting to avoid its responsibilities under the interconnection agreement. Contrary to the assertions of Revolution, AT&T emphasizes that backbilling of TT27 charges is not barred by the interconnection agreement. It is AT&T's position that backbilling is neither addressed nor prohibited by the parties' interconnection agreement. AT&T elected to mirror the 24-month backbilling period because a 24-month period would be consistent with other Midwest states. AT&T contends that 24 months is reasonable and that Revolution has not shown otherwise. Although AT&T does not concede that the 24-month period applies, AT&T calculates that it did bill Revolution within the 24-month period. Specifically, AT&T backbilled for the period October 2002 through June 9, 2004. Its billing took place in mid-2004, within the two-year period (AT&T Reply Br. 3-4).

In its reply brief, AT&T responds to Revolution's request that the pay and dispute provision be voided. First, AT&T accuses Revolution of failing to follow the pay and dispute provision. As a result, AT&T believes that Revolution's claims are barred. Second, AT&T points out that the Commission has never voided any provision of an interconnection agreement entered into by two carriers under the Telecommunications

Act. To AT&T, voiding a provision of the agreement would violate the sanctity of negotiated agreements (AT&T Reply Br. 5).

CONCLUSION

In this complaint proceeding, Revolution effectively raises two counts. One count alleges that AT&T improperly backbilled for TT27. The other count claims that AT&T charged labor rates for work that was done electronically. In both counts, we find that Revolution has met its burden of proof.

With respect to AT&T's billing for TT27, AT&T claims that it had not billed Revolution for TT27. AT&T attributed the underbilling to a programming error in its CABS billing system that led to a failure to capture TT27. The parties concur that AT&T backbilled Revolution almost two years later in September 2004 in an amount exceeding $207,000.[3] Because AT&T discovered that a portion of the traffic had been mistakenly billed as TT26, AT&T indicated that it credited Revolution $14,615.46, reducing Revolution's obligation from $207,770.90 to $193,155.44 plus late fees.

Revolution claims that the backbilled charges relate back to September 2002. AT&T states that the charges billed in September 2004 cover the period October 1, 2002, through June 9, 2004. AT&T reprocessed and billed in August 2004 for use that occurred from March 29, 2004, through June 9, 2004. The parties further concur that AT&T presented a billing to Revolution as a line item debit for previously unbilled TT27, without itemization or supporting documentation.

Revolution and AT&T are at odds concerning what constitutes a proper billing. Revolution contends that AT&T must adhere to OBF guidelines. Moreover, Revolution takes the position that a bill must be presented in a proper format with supporting detail and an opportunity for verification. AT&T retorts that OBF guidelines are not mandatory; there are no OBF rules that can be violated. Moreover, AT&T claims that a backbill does not need to comply with OBF guidelines nor does it need to provide usage detail.

AT&T maintains that it provided Revolution, in its original billing, with sufficient usage detail in the form of a DUF record. Revolution is uncertain whether it received DUF records. Although Revolution accuses AT&T of destroying DUF records, AT&T responds that it does not destroy records. Instead, AT&T explains that records are retained until they "age off" the system. The parties do not dispute that the relevant DUF records are no longer available.

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3 In her testimony, Ms. Litke stated that AT&T backbilled Revolution for approximately $207,762.14, plus late fees (Litke Testimony p. 6).

Relying upon Section 10.1.1 of the interconnection agreement, Revolution claims that AT&T's billing is void for arising more than 24 months from the date that the dispute occurred or should reasonably have been discovered. In further support of its position, Revolution cites 47 U.S.C. §415(a) of the Act for a 24-month limitation period. Revolution argues that the 24-month period should initiate upon creation of the DUF, since that is the time this claim should have reasonably been discovered. Insofar as charges stemming from October 2002 to June 2004, Revolution concludes that the charges are time barred by the parties' interconnection agreement and by federal statute. AT&T, in response, rejects the applicability of a federal statute to a complaint where federal law is not controlling. Moreover, even assuming the applicability of a 24-month limitations period, AT&T argues that it has asserted its claim within two years.

Based on the facts asserted by the parties, we conclude that AT&T submitted its bill within the 24-month period addressed in Section 10.1.1 of the interconnection agreement. Revolution argues that AT&T should have discovered the charges upon the creation of the original DUF. It is unclear as to what specific date of discovery Revolution refers. On the other hand, the parties agree that AT&T submitted the backbill for TT27 in September 2004 for the period October 2002 to March 2004. The bill, or claim, falls within the 24-month period.

Having determined that AT&T has asserted a timely claim for the TT27 charges, we next address whether backbilling is even permissible under the parties' interconnection agreement. The interconnection agreement provides that billing for TT27 should occur each month and that the bill be presented in an OBF compliant format. The agreement makes no provision for late bills, tardy invoices, or backbilling. Because there is no such provision, Revolution urges us to find that backbilling should not be permitted. Even though the agreement does not specifically authorize backbilling, we note that the agreement does not prohibit it either. Thus, we will consider the circumstances of the backbilling of the TT27 charges in question and determine whether it is reasonable.

The backbill in this case consisted of an unsupported, single line entry for more than $207,000 on Revolution's regular monthly bill. The amount of the backbill represented 21,000,000 traffic transactions going back two years allegedly due to an AT&T billing system error. There is no dispute that the DUF records which could have been used to substantiate the two year's worth of backbilled charges are no longer available from AT&T due to the expiration of a record retention process. There is also no question that AT&T's line item charge does not comport with OBF requirements. AT&T argues that, because the interconnection agreement does not affirmatively state that backbills must be OBF compliant, AT&T is relieved of backbilling in an OBF compliant format. AT&T's position is nonsensical. First of all, if we were to adopt AT&T's position, then, no backbill should be permitted at all, since the interconnection agreement does not affirmatively allow for backbilling. Secondly, we cannot reconcile AT&T's position that call detail is required for monthly billing and yet it is not required for backbilling. To us, it is even more critical that a customer being billed up to two years after the charges were purportedly incurred would have the supporting detail necessary to allow for verification of the charges. To not require such supporting detail for late-billed charges would allow AT&T to evade the essential OBF element that a bill can be audited and the charges verified, and would unfairly penalize Revolution for AT&T's acts and omissions.

Accordingly, after reviewing the circumstances of the backbilling and all of the information in the record, the Commission concludes that Revolution has met its burden of proof that AT&T's backbill for TT27 charges is unjust and unreasonable. We find that AT&T has an obligation, just as it does for a monthly bill, to backbill in an OBF compliant manner or to provide some means of verifying and auditing the backbilled charges. There is no evidence in this case that AT&T has complied with industry or other reasonable billing standards. In our view, it is unreasonable for AT&T to bill Revolution in such a way as to cause Revolution to comb through 21,000,000 traffic transactions to verify two year's worth of billing, particularly when the problem that caused the backbilling was of AT&T's own creation. It is also unreasonable for AT&T to backbill for a period of time beyond which it retains the records which would allow substantiation of the charges.

AT&T points out that this backbilling problem impacted over 40 CLECs, and only Revolution has made an issue of the TT27 backbilling. We do not find this compelling or relevant to the issue at hand. Taking into account that Revolution had already paid a significant amount of money for TT27 traffic prior to the backbilling, and given the history of numerous billing mistakes, corrections and adjustments over the years, it is certainly understandable that Revolution would question an unsupported, single line backbilled item. Indeed, this history between the parties makes it all the more unreasonable that AT&T would not back up such charges with verifiable and auditable records from which Revolution or the Commission could substantiate the charges.

Accordingly, having found the circumstances of the TT27 backbilling to be unreasonable, and absent any basis in the record for us to substantiate the TT27 charges, we must invalidate AT&T's charges billed to Revolution. We, therefore, find that it is appropriate to award the funds held in escrow, with accrued interest, to Revolution.

As with TT27 charges, Revolution contends that AT&T has billed improperly for dispatch charges. According to the testimony, a dispatch may be necessary when Revolution, a CLEC, seeks to establish telephone service for a customer. To migrate a customer from AT&T to a CLEC, the CLEC submits an LSR. AT&T processes the LSR either electronically or manually. If all facilities are connected from the service address to the serving central office, an order can be processed electronically. If any of the facilities are not in place to provide the requested service, AT&T must dispatch a technician to make the required connections. Manual labor may be required outside the central office, inside the central office, or both. If an order is processed electronically, the appropriate charge is \$.74. If the order is processed manually, requiring physical labor, the appropriate charge is \$33.88.

Revolution claims that AT&T has charged labor rates for orders that were completed electronically. The error, according to Revolution, stems from AT&T's failure to correct the billing system that was at issue in Case No. 02-1957-TP-UNC. Revolution, in part, bases whether an order is processed manually or electronically on the time taken to complete the order. Based on its understanding of the inherent delays in the processing of service orders, Revolution concludes that it takes more than 24 hours from the submission of an order to the manual completion of the wiring activity. Combing through billing data, Revolution highlighted those instances where orders were completed in a short time frame. Revolution challenged those orders that were charged at the \$33.88 rate.

AT&T rejects the notion that the time to complete an order indicates whether orders are provisioned electronically. AT&T offered examples of how a technician could complete a task within minutes of receiving a work order.

Other considerations lead Revolution to question AT&T's dispatch billing. Failing in its efforts to obtain additional information, Revolution points out that AT&T has not been able to identify the person who performed the work or a description of the work done. Without such details, Revolution questions the credibility of AT&T's dispatch billing.

In response, AT&T contends that it did investigate Revolution's claims. AT&T concluded that some of Revolution's claims were correct, some were duplicate claims, some were billed pursuant to the interconnection agreement, some were submitted beyond the dispute time limitation, and some were not found on Revolution's bill. To verify a dispatch, AT&T's LSC consults the Work Force Administration system. If AT&T determines that the claim is invalid, AT&T denies the claim. Through this process, AT&T contends that it made appropriate adjustments to Revolution's bill.

The EDI provides additional weight to Revolution's argument. Revolution discovered instances where the EDI indicated "no dispatch." From this, Revolution concludes that no technician was dispatched to complete a wire connection. AT&T explained that the EDI does have a facility available indicator. It provides the pre-ordering status of facilities. By the time a CLEC submits an order, the facilities may no longer be available. Moreover, the indicator is used to identify the availability of outside facility only. It provides no information on central office wiring activity. Even though the EDI allegedly only provides a preordering snapshot of outside facility availability, a "no dispatch" indicator, without evidence to the contrary, does favor Revolution's position that an electronic connection charge should apply.

Revolution has presented a number of factors to support its claim that it was improperly billed. The factors include the abbreviated time of completing manual dispatch orders, the lack of information concerning the work performed, absence of the identity of the technicians who performed the work, and the EDI indicator showing "no dispatch." Weighing the evidence, we find that Revolution has presented sufficient proof that AT&T's billing for dispatch charges may be unreasonable. As with TT27 charges, it is incumbent upon AT&T to provide means of substantiating and verifying the accuracy of its billings. The record is devoid of any evidence from which the Commission can conclude that AT&T's bills were accurate. Without verification, we find that AT&T's billings are inherently unreasonable. We, therefore, conclude that Revolution is not obligated to pay the disputed charges.

Revolution requests that the Commission strike from the parties' interconnection agreement the late payment charge provision. We find that it is unnecessary to do so. Because we find in favor of Revolution with respect to TT27 and dispatch charges, application of the late payment charge is moot.

<u>FINDINGS OF FACT AND CONCLUSIONS OF LAW:</u>

(1) On March 15, 2006, Revolution filed a complaint against AT&T. Revolution also filed a motion to bar AT&T from suspending Revolution's services and a motion to prevent AT&T from refusing to provision new services.

(2) AT&T filed an answer to the complaint on March 20, 2006. With its answer, AT&T filed a motion to dismiss or, in the alternative, a memorandum contra Revolution's motion for a cease and desist order.

(3) Revolution filed a memorandum contra AT&T's motion to dismiss on March 21, 2006.

(4) AT&T filed a reply to Revolution's memorandum contra on March 24, 2006.

(5) On March 29, 2006, the Commission issued an entry directing Revolution to deposit $100,000 into an escrow account. In addition, the Commission directed AT&T to suspend collection activities, cease service disconnections, and continue to provision Revolution's new service orders.

(6) On March 30, 2006, the attorney examiner scheduled a settlement conference for April 4, 2006.[4] The parties met as scheduled but did not resolve the issues.

(7) On June 16, 2006, AT&T filed a motion for an order to address Revolution's failure to fund an escrow account in the amount of $100,000.

(8) By entry issued July 18, 2006, the attorney examiner scheduled this matter for hearing to occur on October 19, 2006. Pursuant to the schedule set forth in the entry, Revolution filed direct testimony on September 15, 2006. AT&T filed rebuttal testimony on September 29, 2006.

(9) By entry issued October 18, 2006, the attorney examiner continued the hearing from October 19, 2006, to December 14, 2006. On December 4, 2006, the attorney examiner rescheduled the hearing date from December 14, 2006, to January 18, 2007. By entry issued January 17, 2007, the attorney examiner continued the hearing indefinitely.

(10) On June 25, 2007, AT&T moved to schedule a hearing on July 31, 2007. Revolution responded by letter on July 2, 2007, stating that its counsel was unavailable on July 31, 2007.

(11) On August 17, 2007, the attorney examiner issued an entry scheduling this matter for hearing to take place on September 20, 2007. On September 14, 2007, the parties filed a stipulation agreeing to submit the case to the Commission based upon a stipulated record.

(12) On September 19, 2007, the attorney examiner issued an entry cancelling the hearing and approving the parties' stipulation.

(13) The parties filed initial briefs on November 13, 2007. The parties filed reply briefs on December 6, 2007.

(14) Revolution and AT&T are telephone companies as defined by Section 4905.03(A)(2), Revised Code, and, therefore, they are subject to the jurisdiction of this Commission under the authority of Sections 4905.04 and 4905.05, Revised Code.

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4 Initially, by entry issued March 27, 2006, the conference was scheduled for April 3, 2006.

(15) In a complaint case such as this, the burden of proof is on the complainant. *Grossman v. Public Utilities Commission*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).

(16) Revolution has presented sufficient evidence to show that AT&T's billing for TT27 and dispatch charges is unreasonable. All funds held in escrow, plus accrued interest, should be awarded to Revolution.

It is, therefore,

ORDERED, That motions filed by Revolution on October 2, 2007, November 5, 2007, and December 6, 2007, to extend the time to file documents and briefs are granted. It is, further,

ORDERED, That the motion for protective order filed by AT&T on December 6, 2007, is granted and, in accordance with Rule 4901-1-24(F), O.A.C., shall remain in effect for a period of 18 months from the date of this Opinion and Order. It is, further,

ORDERED, That the funds held in escrow that relate to dispatch and TT27 charges are awarded to Revolution, and AT&T shall continue to provision Revolution's service orders, pursuant to any existing agreement. AT&T shall also refrain from collection efforts or disconnections relating to this dispute. It is, further, ORDERED, That copies of this Opinion and Order be served upon the parties, their respective counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

LDJ/vrm

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Reneé J. Jenkins
Secretary